(18,542.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 56.

THE PENNSYLVANIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM HUGHES AND BENJAMIN F. A. FLEMING, TRADING AS HUGHES & FLEMING.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 16, 1903.

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6285

1 In the Supreme Court of Pennsylvania.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming, Plaintiffs,
v.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

No. 239, January Term, 1901.

Petition for Writ of Error.

To the Honorable J. Brewster McCollum, chief justice of the supreme court of Pennsylvania:

The petition of The Pennsylvania Railroad Company respectfully showeth:

That your petitioner brought suit into the supreme court of Pennsylvania for the eastern district, to January term, 1901, No. 239, by writ of certiorari to an appeal from the judgment of the court of common pleas, of Philadelphia county, No. 2, of September term, 1900, No. 39, in which suit in said supreme court your petitioner was appellant and defendant in the said court of common pleas, and William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming were appellees in said supreme court and plaintiffs in said court of common pleas.

2 That the said suit in the said court of commom pleas was an action in trespass to recover $10,000 damages for injuries to a horse shipped from Albany, N. Y. to Cynwyd, Pa., injured Aug. 12, 1900, at latter place. The defendant pleaded not guilty. At trial, defendant admitted liability but relied upon the bill of lading and live stock contract, under which shipment was made and rate based, and which also contained an agreed valuation of $100. The defendant presented the following points to the learned trial judge for charge:

1. "That it was lawful in the State of New York for the carrier to limit its liability by a special contract for an injury resulting from its negligence; that said contract having been for a through consignment from Albany to Cynwyd, a place within this State, said contract must be considered in its entirety and is incapable of divisibility; that said contract having stipulated for an agreed valuation of the stock shipped, the parties must be governed by its terms throughout the entire route, as said contract must be interpreted and enforced here by the law of the place where it was made, and within which State it was partly performed; and that, consequently, the plaintiffs were not entitled to recover in excess of the valuation agreed upon by the parties at the time of shipment."

2. "That the plaintiffs are not entitled to recover in excess of $100."

Both points were declined. A verdict was rendered for plaintiffs for $9900.

That the said court of common pleas rendered judgment against your petitioner on the 10th day of June, 1901, in the sum of $9900, with costs.

That afterwards, to wit, on the 24th day of June, 1901, an appeal from said judgment was taken to the supreme court of Pennsylvania and said judgment of the court of common pleas was asked to be reversed, *inter alia*,

"The learned court below erred in entering judgment in conflict with the act of Congress of February 4th, 1887, entitled "An act to regulate commerce." Section 1 of said act clearly provides that where the transportation is from one State to another, under a through bill of lading, that its provisions shall be carried out unless it be in conflict with a statute of the State in which it may be performed or in conflict with the policy of the United States as laid down in the Federal courts, and that, as the contract was valid in the place where made, and as there is no statute in Pennsylvania prohibitory of an agreed valuation to establish a rate, and as it is consistent with the policy of the United States as declared by the Federal courts, the judgment should have been for the valuation mentioned in the contract."

That on the 21st day of April, 1902, the supreme court of Pennsylvania, sitting at Philadelphia, overruled said assignment
4 of error and ordered said judgment to be affirmed, and afterwards on the said 21st day of April, 1902, the said judgment was duly entered and recorded in the eastern district of Pennsylvania aforesaid.

That by virtue of said affirmance it has been declared to be the law of Pennsylvania that a contract for inter-state commerce transportation, valid under the laws of the United States, is invalid and non-enforceable.

That the said judgment of the said supreme court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the defence sought to be availed of by your petitioner defendant and appellant aforesaid, was that inasmuch as the contract in controversy was for an interstate transportation, it should have been interpreted in accordance with the Constitution of the United States, article I, section 8, empowering Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes," the act of Congress, approved February 4, 1887, entitled "An act to regulate commerce," and the policy laid down by the Federal courts, all of which appears of record.

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against said Constitution of the United States, act of Congress and policy of the Federal courts.

5 Your petitioner, therefore, prays for the allowance of a writ of error to the supreme court of Pennsylvania in order that the said judgment of the supreme court of Pennsylvania may be re-

examined and reversed or affirmed in the Supreme Court of the United States.

And it will ever pray.

THE PENNSYLVANIA RAILROAD COMPANY,
By CHAS. E. PUGH, *2nd Vice-President.*

Attest: A. J. COUNTY, [SEAL.]
Ass't Secretary.

Charles E. Pugh, being duly sworn according to law, deposes and says that he is the second vice-president of The Pennsylvania Railroad Company, the petitioner, and, on its behalf, says that the facts in the above petition stated are true to the best of his knowledge and belief.

CHAS. E. PUGH.

Sworn to and subscribed before me this fifth day of May, 1902.
J. BREWSTER McCOLLUM,
Chief Justice of Pennsylvania.

6 Endorsement: January term 1901. S. C. E. D. Appeal of the P. R. R. Co. from the judgment made in the case in which William Hughes and Benj. F. A. Fleming, trading as Hughes & Fleming, were plaintiffs and the above named appellant was defendant. Petition for writ of error. And now, to wit, May 6th, 1902 citation awarded and writ of error allowed by me. J. Brewster McCollum, chief justice of Pennsylvania. Filed May 14th, 1902. George Brodbeck, Jr., pro clerk U. S. C. C. Sellers & Rhoads John G. Johnson, for appellant.

7 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the supreme court of the State of Pennsylvania for the eastern district, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Pennsylvania for the eastern district before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had, which plea was the appeal of the Pennsylvania Railroad Company of January term, 1901, No. 239, to the supreme court from the judgment of the court of common pleas, No. 2, of Philadelphia county, in a certain suit between William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming, plaintiffs, and The Pennsylvania Railroad Company, defendant, wherein was drawn in question the validity of the Constitution and statute law of the United States, and a defence claimed and exercised thereunder and the decision was against their validity, a

manifest error hath happened to the great damage of the said Pennsylvania Railroad Company, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given,
8 that then, under your seal distinctly and openly you send the records and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 14th day of May, in the year of our Lord, one thousand nine hundred and two, and the one hundred and twenty-sixth year of the Independence of the United State.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

GEORGE BRODBECK, Jr.,
Pro Clerk U. S. Circuit Court, East'n District of Pennsylvania.

9 [Endorsed:] 239. Jan. term, 1901—Supreme court Pa., E. dist. Appeal of the P. R. R. Co. from the judgment made in the case in which William Hughes and Benj. F. A. Fleming, trading as Hughes & Fleming were plaintiffs and the above named appellant was defendant. Writ of error allowed by me this 5th day of May, 1902. J. Brewster McCollum, chief justice of Pennsylvania. Sellers & Rhoads, John G. Johnson, for appellant.

10 *Citation.*

The United States of America to William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, next, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the eastern district wherein The Pennsylvania Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. Brewster McCollum, chief justice of the supreme court of Pennsylvania, this fifth day of May, in the year of our Lord one thousand nine hundred and two.

J. BREWSTER McCOLLUM,
Chief Justice of Pennsylvania

Affidavit of Service of Citation.

Thomas Bluett, being duly sworn, deposes and says that he served the within citation upon the defendants in error William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming,
11 by reading the same to their attorney, A. S. L. Shields, Esq., and handing him a true copy thereof on the fifteenth day of May, 1902.

THOMAS BLUETT.

Sworn to and subscribed before me this 16th day of May, 1902.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary Supreme Court of Pennsylvania, East. Dist.

12 [Endorsed:] 239. Jan. term, 1901. Supreme court of Pa. E. dist. Appeal of the P. R. R. Co. from the judgment made in the case in which William Hughes and Benj. F. A. Fleming, trading as Hughes & Fleming were plaintiffs and the above named appellant was defendant. Citation and affidavit of service of citation. Filed May 16 1902 In supreme court of Penna. Sellers & Rhoads, John G. Johnson, for appellant.

13 In the Supreme Court of Pennsylvania, January Term, 1901.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming, Plaintiffs, *v.* THE PENNSYLVANIA RAILROAD COMPANY, Defendant.	No. 239.

Bond and Justifications of Sureties.

Know all men by these presents that we, the Pennsylvania Railroad Company and Fidelity & Deposit Co. of Md. are held and firmly bound unto William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming, in the full and just sum of twenty thousand dollars ($20,000) to be paid to the said Hughes & Fleming, their certain attorney, executors, administrators or assigns, to which payment well and truly to be made, we do bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventh day of May, one thousand nine hundred and two.

Whereas lately at a court of common pleas No. 2 in and for the county of Philadelphia, judgment was entered against the Pennsylvania Railroad Company at the suit of William Hughes
14 and Benjamin F. A. Fleming, trading as Hughes and Fleming, of September term, 1900, No. 39, which judgment was

afterwards affirmed by the supreme court of the State of Pennsylvania in a certain plea and suit in said court, of January term, 1901, No. 239. And the said Pennsylvania Railroad Company having obtained a writ of error to the Supreme Court of the United States to reverse the said judgment rendered in the last above entitled action, and having filed a copy thereof in the office of the prothonotary of said court, and a citation directed to the said William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next.

Now the condition of the above obligation is such that if the said Pennsylvania Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

THE PENNSYLVANIA RAILROAD COMPANY,
By CHAS. E. PUGH, *Vice President.*
Attest: A. J. COUNTY, *Ass't Secretary.* [SEAL.]
FIDELITY & DEPOSIT CO. OF MD.
THEO. W. STONE, *Legal Director.*
Attest: HERMAN HOOPES, [SEAL.]
Resident Manager.

Sealed and delivered in the presence of
CHAS. S. GREENE.

Approved by
J. BREWSTER McCOLLUM,
Chief Justice of Pennsylvania.

15 STATE OF PENNSYLVANIA, } ss:
Eastern District, }

Before me, prothonotary of the supreme court of Pennsylvania, eastern district, personally came the Pennsylvania Railroad Company, by its 2nd vice president, Chas. E. Pugh, and its assistant secretary, A. J. County, the obligor in the foregoing bond, who being severally sworn according to law, did depose and say each for himself respectively, as follows: viz: that the Pennsylvania Railroad Company is the owner of property in the State of Pennsylvania, worth over and above all liabilities twenty thousand dollars.

CHAS. E. PUGH.
A. J. COUNTY.

Sworn to and subscribed before me this seventh day of May, 1902.
CHAS. S. GREENE,
Prothonotary.
[SEAL.]

Endorsement: No. 239 Jan. term 1901. Supreme court of Pa. E. dist. Appeal of the P. R. R. Co. from the judgment made in the case in which William Hughes and Benj. F. A. Fleming, trading as Hughes & Fleming were plaintiffs and the above named appellant was defendant. Bond. Sellers & Rhoads John G. Johnson for appellant.

16 Supreme Court of Pennsylvania, Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania, in and for the eastern district, *inter alia*, the following is thus contained:

Appearance Docket.

Docket Entries.

No. 239, January Term, 1901.

A. S. L. Shields

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming, Plaintiffs,
v.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant. } 239.

David W. Sellers
John G. Johnson.
Sellers & Rhoads
Order filed 4-24-1902

Appeal from the court of common pleas No. 2 of the county of Philadelphia.
Filed June 24, 1901.
Eo die.—Certiorari exit. Ret'ble the first Monday of January 1902.
November 18, 1901.—Assignments of error filed.
November 22, 1901.—Record returned and filed.
January 20, 1902.—Argued.
17 April 21, 1902.—Judgment is affirmed.
Opinion by Potter, J.
Mitchell, J. and Brown, J. dissent.
Appeal of defendant from the judgment.
C. P. 39 Sept. term, 1900
Petition for a writ of error from the Supreme Court of the United States.

Writ of error allowed by me this 5th day of May, 1902.

J. BREWSTER McCOLLUM,
Chief Justice of Pennsylvania.

And now to wit, May 6th 1902 *citation awarded* and *writ of error allowed* by me

J. BREWSTER McCOLLUM,
Chief Justice of Pennsylvania.

May 7, 1902.—Bond in $20,000 filed.
May 14, 1902.—Writ of error from the Supreme Court of the United States brought into office.
May 16, 1902.—Citation and affidavit of service of citation brought into office
May 17, 1902.—Assignments of error (Supreme Court of the United States) brought into office.

18 *Appeal and Affidavit.*

In the Supreme Court of Pennsylvania for the Eastern District.

Court of Common Pleas No. 2 of the County of Philadelphia, September Term, 1900.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes and Fleming, Plaintiffs,
v.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant. } No. 39.

Enter appeal on behalf of defendant from judgment of the court of common pleas No. 2 of the county of Philadelphia.

DAVID W. SELLERS,
For Appellant.

To Charles S. Greene, prothonotary supreme court, eastern district.

19 COUNTY OF PHILADELPHIA, *ss:*

Edwin Jaquett Sellers being duly sworn saith that said appeal is not taken for the purpose of delay, but because appellant believes it has suffered injustice by the judgment from which it appeals. Deponent makes this affidavit as the attorney of the said defendant appellant.

(Signed) EDWIN JAQUETT SELLERS.

Sworn to and subscribed, this 22nd day of June, A. D. 1901.

CHAS. S. GREENE,
Prothonotary.

I agree that the prothonotary of the supreme court may issue a writ of certiorari in the above without a recognizance.

(Signed) A. S. L. SHIELDS,
Pl'ff's Att'y.

Endorsement: No. 239 January term, 1901. Supreme court of Pennsylvania, eastern district. William Hughes *et al.*, trading etc., *v.* Pennsylvania Railroad Co., appellant. Appeal and affidavit Filed Jun- 24, 1901. In supreme court. David W. Sellers, attorney for appellant.

20 *Præcipe for Certiorari.*

In the Supreme Court of Pennsylvania for the Eastern District.

PENNSYLVANIA RAILROAD COMPANY, Appellant.

Certiorari to the court of common pleas No. 2 of the county of Philadelphia, of September term, 1900. No. 39.

Issue certiorari to the court of common pleas No. 2 of the county of Philadelphia, to bring up record and proceedings in a certain action in said court, No. 2 September term, 1900 wherein Hughes & Fleming are plaintiffs, and Pennsylvania Railroad Company defendant. Returnable to next term, *sec. reg.*

(Signed) DAVID W. SELLERS,
Attorney for Appellant.

To Charles S. Greene, proth'y, sup. court, E. D.

Endorsement: No. 239 January term 1901. Supreme court of Pennsylvania, eastern district. William Hughes *et al.*, trading etc., *v.* Pennsylvania Railroad Co. appellants. Præcipe for certiorari. Filed Jun- 24, 1901. In supreme court. David W. Sellers, attorney for appellant.

21 Record of the court of common pleas No. 2 of Philadelphia county.

Exemplification.

PHILADELPHIA COUNTY, } *sct:*
State of Pennsylvania, }

Among the records and proceedings of the court of common pleas, No. 2 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 39 September term, 1900, to wit:

Docket Entries.

September Term, 1900.

Shields.

WILLIAM HUGHES and BENJAMIN F. FLEMING, Trading as Hughes and Fleming,
v.
PENNSYLVANIA RAILROAD Co. } 39.

D. W. Sellers
Oct. 5, 1900.

Sums trespass Exit Sept. 21, 1900.
Ret. 1 Mon. Oct. 1900.
Served.
May 7, 1900.—Jury called.
May 8, 1901.—V. for plaintiff $9900.
May 13, 1900.—Rule for new trial.
Eo die reason filed.
Oct. 5, 1900.—Statement and rule to plead filed.
Oct. 24, 1900.—Plea filed
May 10, 1901.—Pl't'ffs' bill of $57.87 filed
May 29, 1901.—Bill of exceptions filed.
June 4, 1901.—Rule discharged
June 8, 1901.—Stenographic notes of testimony filed.
June 10, 1901.—Jury fee paid.
Eo die judgment.
June 24, 1901.—Certiorari from S. C. (of Jan'y T. 1901, No. 239) bro't into office

22 Certified from the record, this 8th day of July, A. D. 1901.
(Signed) [SEAL.] C. G. McCULLOUGH,
Pro. Proth'y.

Præcipe for Summons Trespass.

WILLIAM HUGHES and BENJAMIN F. A. Fleming, Trading as Hughes & Fleming,
v.
PENNSYLVANIA RAILROAD COMPANY. } No. —. C. P. No. —, September Term, 1900.

Issue summons trespass as above. Returnable first Monday of October, 1900.
(Signed) A. S. L. SHIELDS,
Attorney for Plaintiffs.

To proth'y C. P.

Endorsement: No. 39 Sept. term, 1900. C. P. No. 2. Hughes *et al.*, tr'd'g &c. *v.* Pennsylvania Railroad Company. Præcipe for summons trespass Filed Sep. 20, 1900. Rains, pro. proth'y. A. S. L. Shields, att'y for pl't'fs.

23 *Summons Trespass.*

COUNTY OF PHILADELPHIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon Pennsylvania Railroad Company, late of your county, so that it be and appear before our judges, at Philadelphia, at our court of common pleas No. 2 of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of October next, there to answer William Hughes and Benjamin F. A. Fleming, trading as Hughes & Fleming of a plea of trespass. And to have you then and there this writ.

Witness the Honorable S. W. Pennypacker, president of our said court, at Philadelphia, the 20th day of Sept. in the year of our Lord, one thousand nine hundred.

(Signed) SOLOMON RAINS,
P. Prothonotary.

Served the Pennsylvania Railroad Company by giving October 1st, 1900 a true and attested copy of the within writ to R. W. Smith, treasurer of said company, and making known to him the contents thereof.

So answers

(Signed) PETER SAYBOLT,
Deputy Sheriff.

" WENCEL HARTMAN, *Sheriff.*

24 Endorsement: No. 39 Sept. term, 1900. Court of common pleas, No. 2 Hughes & Fleming *v.* Pennsylvania Railroad Company. Summons trespass. Shields.

Statement of Plaintiffs' Claim.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming,
v.
THE PENNSYLVANIA RAILROAD COMPANY.
No. 39. C. P. No. 2, September Term, 1900.

Statement of plaintiffs' claim.

COUNTY OF PHILADELPHIA, *ss:*

William Hughes and Benjamin F. A. Fleming, trading as Hughes and Fleming, the plaintiffs, by A. S. L. Shields, Esq., their attorney, claim of the defendant the sum of ten thousand dollars damages

for injuries to the property of the plaintiffs caused by the negligence of the defendant under the following averments of facts and circumstances:

That heretofore, to wit, on the 12th day of August, 1900, the defendant was a common carrier for hire and as such common
25 carrier had in his custody and possession a certain bay gelding, known as "Montauk," the property of the plaintiffs, of great value, to wit, of the value of ten thousand dollars, in a certain car of the said defendant, to be safely and securely carried by it as such common carrier for hire over and along the railroad of the defendant in the State of Pennsylvania to Cynwyd, Montgomery county, in said State.

And it became and was the duty of said defendant to use due and proper care and caution to safely and securely carry the said gelding over and along the line of its said railroad as aforesaid.

Yet the defendant, not regarding its duty in this behalf, did not use due and proper care and caution to safely and securely carry the said gelding as aforesaid; but, on the contrary, on the day and year aforesaid, the defendant side-tracked the car in which the said bay gelding was being carried by it as such common carrier for hire, at a siding on the main line of its said railroad at Fifty-second street in the county of Philadelphia in the State of Pennsylvania, and while the said car in which was the said bay gelding was still upon the said siding, to wit, on the day and year aforesaid, at the county aforesaid, the defendant, by its servants and agents, so carelessly, recklessly and negligently caused two certain other cars loaded with heavy metal to be run and driven upon and against the said
26 first mentioned car of the defendant on the said siding of the defendant, in which the said gelding was being carried by the defendant as such common carrier for hire, and the collision was so forcible and violent, that thereby the said bay gelding of the plaintiffs in the said car was knocked about in the said car against the sides thereof, and severely bruised and contused, his muscles strained, shocked and injured his tail broken, and his whole system so badly shocked and injured that thereby he became of no value and wholly ruined.

And the plaintiffs were necessarily compelled to incur large expenses in the endeavor to heal and cure their said gelding "Montauk" of his said injuries.

Wherefore the plaintiffs say they are injured and have sustained damages to a large amount, to wit, to the amount of ten thousand dollars.

Hence this suit.

(Signed) A. S. L. SHIELDS,
Attorney for Plaintiffs.

To proth'y C. P.

COUNTY OF PHILADELPHIA, *ss:*

Benjamin F. A. Fleming one of the above mentioned plaintiffs, being duly sworn, says that the facts set forth in the foregoing statement of claim are true to the best of his knowledge and belief.

[SEAL.] (Signed) BENJ. F. A. FLEMING.

27 Sworn and subscribed before me this 5th day of October, 1900.

(Sig.) JOHN B. DEVINE,
Notary Public.

Endorsement: No. 39 Sept. term, 1900. C. P. No. 2. William Hughes and Benjamin F. A. Fleming, tr'd'g &c., *v.* Pennsylvania Railroad Company. Statement of plaintiffs' claim. Enter rule on the defendant to plead in 15 days, or judgment *sec. reg.* To pro. C. P. Filed Oct. 5, 1900. Pennypacker, pro. proth'y. A. S. L. Sheilds att'y for pl'ffs.

Appearance.

David W. Sellers, Edwin Jaquett Sellers, attorneys-at-law.

PHILADELPHIA, *Oct.* 10, 1900.

HUGHES & FLEMING *v.* PENNA. R. R. } 39. 2 Sept., 1900.

The proth'y will enter my appearance for the defendant.

(Signed) DAVID W. SELLERS.

Endorsement: No. 39, Sep. term, 1900. C. P. No. 2 Hughes & Fleming *v.* R. R. Appearance Filed Oct. 8, 1900. Pennypacker pro. proth'y David W. Sellers

28 *Plea.*

HUGHES & FLEMING *v.* RAILROAD CO. } No. 39. C. P. No. 2, Sept. Term, 1900.

Defendant pleads—not guilty.

(Signed) DAVID W. SELLERS,
Att'y for Def'ts.

To prothonotary C. P.

Endorsement: No. 39 Sept. term, 1900. C. P. No. 2. Hughes & Fleming *v.* R. R. Plea Filed Oct. 24, 1900. J. Briggs, pro. proth'y. David W. Sellers.

Bill of Costs.

WM. HUGHES and BENJ. F. A. FLEMING, Tr'd'y, &c., v. PENNSYLVANIA R. R. Co. } No. 39. Common Pleas No. 2, Sept. Term, 1900.

Plaintiffs' bill of cost.

The following witnesses attended for the plaintiffs on the days as follows:

29	George W. Cook	2 days, viz. May 7 & 8, 1901					.....	$3.00
	Wesley Wright	2	"	"	"	"	"	.....	3.00
W. H. H. Achuff		2	"	"	"	"	"	.....	3.00
Joshua Evans		2	"	"	"	"	"	.....	3.00
Dr. Chas. Bridge,		2	"	"	"	"	"	.....	3.00
Wm. McFarland		1	"	"	"	"	"	.....	1.50
Thomas Young		1	"	"	"	"	"	.....	1.50
David Morgan,		2	"	"	"	"	"	.....	3.00
Mileage from Ardmore, Pa., 9 miles at 6 cts.								.....	.54
Dr. Rob't J. Fox 2 days, viz. May 7 & 8, 1901								.....	3.00
Mileage from Bryn Mawr, Pa. 10 miles, 6 cts.								.....	.60
Thomas Grady, 2 days, viz. May 7 & 8, 1901								.....	3.00
Mileage from Narberth, Pa., 6 miles, 6 cts.								.....	.36
Frank Jackson, 2 days, viz. May 7 & 8, 1901								.....	3.00
Mileage from Narberth, Pa., 6 miles, 6 cts.								.....	.36
Charles B. Myers, 2 days, viz. May 7 & 8, 1901								.....	3.00
Mileage from Narberth, Pa. 6 miles, 6 cts.								.....	.36
George Garth, 2 days, viz. May 7 & 8, 1901								.....	3.00
Mileage from Penna. line, 30 miles 6 cts.								.....	1.80
Harry Wilkie, 2 days, viz. May 7 & 8, 1901								.....	3.00
Mileage from Penna. line, 200 miles. at 6 cts.								.....	12.00
Subpœna								.....	.25
Service of same								.....	2.10
Affidavit to this bill								.....	.50
									$57.87

30 COUNTY OF PHILADELPHIA, *ss:*

Benj. F. A. Fleming being duly sworn says that the above bill of costs is true and correct, that the above named persons were actually present in the court of common pleas No. 2, room D, as witnesses in the above cases for the plaintiffs on the days and times above specified, and that they are all, in his opinion, material witnesses.

(Signed) BENJ. F. A. FLEMING.

Sworn and subscribed before me this 9th day of May, A. D. 1901.

[SEAL.] (Sig.) JOHN B. DEVINE,
Notary Public.

Commission expires Jan. 2, 1905.

Endorsement: No. 39 Sept. term, 1900. C. C. P. No. 2. Hughes & Fleming *v.* Railroad Co. Bill of costs of plaintiffs. Filed May 10, 1901. J. Briggs, pro. proth'y. A. S. L. Shields, attorney for plaintiffs.

31 In the Court of Common Pleas No. 2 for the City and County of Philadelphia, of September Term, 1900.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming,
v.
PENNSYLVANIA RAILROAD COMPANY. } No. 39.

Be it remembered, that in the said term of September, 1900, came the said plaintiff- into the said court, and impleaded the said defendant in a certain plea of trespass &c., in which the said plaintiff- declared (*prout* statement) and the said defendant pleaded (*prout* plea). And thereupon the issue was joined between them.

And afterwards, to wit, at a session of said court, held at the county aforesaid before the Honorable Mayer Sulzberger, judge of the said court, on the 7 day of May, 1901, the said issue between the said parties came to be tried by a jury of the said county for that purpose duly impanelled (*prout* list of jurors), at which day came as well the said plaintiff- as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue;
32 and upon the trial, the witnesses being duly sworn or affirmed, the following testimony was produced:—

WILLIAM HUGHES and BENJAMIN F. A. Fleming, Trading as Hughes & Fleming,
v.
THE PENNSYLVANIA RAILROAD CO. } No. 39. C. P. No. 2, S., 1900.

PHILADELPHIA, *May 7th and 8th*, 1901.

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34 WILLIAM HUGHES and BENJAMIN F. A. Fleming, Trading as Hughes & Fleming, *v.* THE PENNSYLVANIA RAILROAD CO. } No. 32. C. P. No. 2, S., 1900.

Before Hon. Mayer Sulzberger and a jury.

Present: A. S. L. Shields, Esq., for the plaintiff. E. J. Sellers, Esq., for the defendant.

PHILADELPHIA, *May 7th*, 1901.

HARRY WILKIE, sworn.

By Mr. SHIELDS:

Q. What is your business.
A. Taking care of race horses.
Q. How long have you been in that business.
A. Well since I have been able to run around and take care of myself.
Q. Since you were a boy?
A. Yes, sir.
Q. How old are you now?
A. Twenty-six.

Q. Did you know the race horse Montauk?
A. Yes, sir.
35 Q. How long did you know him?
A. Well, from last spring.
Q. How long had he been in your charge, if at all?
A. From the time Mr. Fleming and Mr. Hughes owned him.
Q. We do not know that. These gentlemen do not know how long they have owned him, as that has not been disclosed to them. About how long?
A. Well, May or June, latter part of May, or June.
Q. Of 1900?
A. 1900.
Q. During that time that you had charge of him for the plaintiffs did you see this horse perform on the track?
A. Yes, sir.
Q. How often?
A. A few times.
Q. Did he have a mark, a record?
A. He had a mark at Point Breeze.
Q. What was that?
A. Sixteen and a quarter.
Q. Two sixteen and a quarter?
A. Yes, sir.
Q. That is the only mark that he received, is it?
A. He had one before that, I believe, but I didn't pay any attention to it; all I know was that I seen him get the mark at the Breeze of sixteen and a quarter.
Q. By a "mark" you mean a record made on a race track?
A. Yes, sir.
36 Q. You saw him trot, did you, two sixteen and a quarter?
A. Saw him pace.
Q. Saw him pace two sixteen and a quarter?
A. Yes, sir.
Q. How old a horse was he?
A. A four year old, I believe.
Q. A four year old?
A. I believe.
Q. Where did you start from on your trip to Cynwyd, in this State?
A. Island Park, Albany.
Q. Island Park, Albany, New York?
A. Yes, sir.
Q. And you went over the West Shore road?
A. I believe we did.
Q. And through New York?
A. Yes, sir.
Q. And then over the Pennsylvania railroad?
A. Yes, sir.
Q. You got on to the Pennsylvania railroad?
A. Yes, sir.

Q. And after you got on to the Pennsylvania railroad, you ran over the Pennsylvania railroad tracks to where?

A. Fifty-second street.

Q. That is the Pennsylvania railroad yard at Fifty-second street?

A. Yes, sir.

37 Q. While you were there what happened to you?

The COURT: This was on the road to some destination?

Mr. SHIELDS: Cynwyd.

Q. How would you reach Cynwyd?

A. We had to go right through Fifty-second street, if we didn't stop, to go to Cynwyd.

Q. You would have to go past Fifty-second street; that is on the Schuylkill division of the Pennsylvania railroad, is it not?

A. Yes, sir.

Q. This was an intermediate station between where you started from in New York, and Cynwyd where you were to go, was it not, I mean Fifty-second street?

A. Yes, sir.

Q. And on the road of the Pennsylvania railroad?

A. And on the Pennsylvania railroad.

Q. And on the road from Albany to Cynwyd, is it not?

A. Yes, sir.

Q. While you were there on your road what happened?

The COURT: When was this?

Mr. SHIELDS: The date of the accident was August 12th 1900. There is no dispute about that.

By Mr. SHIELDS:

Q. August 12th, 1900, was the day that you landed and the day of the accident?

A. The day we landed and the day of the accident.

Q. And while you were thus on your road what happened

38 to the car in which you and the horse were riding?

A. After we got to Fifty-second street?

Q. Yes.

A. Throwed the horse a complete somersault.

Q. What threw him? You did not turn him over. What turned him over?

A. These two cars loaded with iron, loaded very heavy.

Q. What two cars?

A. There was two cars——

Q. You were standing on the track, were you not?

A. I was in the car.

Q. With the horse?

A. With the horse.

Q. And that car was standing on the track; that is correct, is it not?

A. Yes, sir.

By the COURT:

Q. Let us find out about that car. Was the car alone or forming part of a train, or how?

A. Our car, the car that I was in, was standing by itself near no car——

By Mr. SHIELDS:

Q. Near no car, and waiting?

A. Near no car; that is, there was two or three spaces of another car between us and in connection with another one——

Q. Waiting the drilling?

A. Yes, sir.

39 Q. So that it would be made up in a train?

A. Yes, sir.

Q. While it was in that condition what happened?

A. These two cars loaded with iron, and loaded very heavy, came down and ran into us.

By the COURT:

Q. How did they come down?

A. They came on the same track we were, and hit the car that I was in and the horse was in.

Q. Were those two cars alone?

A. Yes, sir.

Q. Without a locomotive?

A. Yes, or a man.

Q. How?

A. Or a man.

Q. Did you see them start?

A. No, I seen them when they were approaching on me.

By Mr. SHIELDS:

Q. And felt them, did you not?

A. And I felt the rumbling.

Q. When they collided what happened?

A. It throwed the horse a complete somersault and I got out of the way of it.

Q. You got out of the way of it?

A. To protect myself.

Q. What was the result to the horse?

A. He was injured.

40 Q. To what degree, how bad was he hurt?

A. That I could not say, he was hurt pretty badly.

Q. What did you see, was he able to get up?

A. Well, he got up with a struggle, and when he got up he stood right in one corner of the car and never moved until we ran him to Cynwyd.

Q. Until you got to Cynwyd?

A. Yes, until they ran it out there, and then he commenced to move around the car a little, but very little.

Q. Very little
A. Yes, sir.
Q. After you got him out of the car what was done with him?
A. Dr. Cullen took him off the car.
Q. Dr. who?
A. Dr. Cullen took him off the car, and his man.
Q. Who?
A. Dr. Cullen took him off the car and his man, or employé, it was, at the stock yards, and I had nothing more to do with him when they came after him.
Q. You had had considerable experience with horses prior to this?
A. Yes, sir.
Q. When you shipped him to Albany, or rather when that car was struck containing the horse in question, was the horse sound?
A. Yes, sir.
Q. How was he afterwards?
A. He was unsound.
41 Q. Is he worth anything, or is he ruined?
A. He is ruined.
Q. What?
A. He is ruined.
Q. And worth nothing?
A. And worth nothing.

Cross-examined.

By Mr. SELLERS:

Q. Is that your signature?

(Paper shown witness.)

A. Yes, sir.
Q. And you identify that as the shipping receipt which was given when the horse was shipped?

Mr. SHIELDS: We will admit that: we will admit that it is his signature, to save time.

Q. I say you also admit that is the shipping contract which when the horse was shipped, was given you in Albany?
A. That is the paper I had in my possession.
Q. What has become of this horse since the accident?
A. Since the accident?
Q. Yes.
A. Where is it to-day? I have been away.
Q. You have been away since the accident?
A. Yes, sir.
Q. You have seen the horse since the accident. Tell us what became of the horse since the accident.

42 A. I have seen him since the accident but I have not——
Q. He was not stuffed in a museum, was he? I mean cannot you tell the jury——

The COURT: Tell us when you saw him last.

Q. Just tell when you saw him.
A. I saw him at Belmont.
Q. How long ago?
A. When I left there in February.
Q. Last February you saw him at Belmont, that is February 1901, you saw him at Belmont, that is the Gentlemen's driving park out here at Belmont?
A. Yes, sir.
Q. What was he doing out there?
A. He was turned out.
Q. At pasture?
A. No, he was turned out.
Q. Was he in charge of a trainer?

By the COURT:

Q. What is the meaning of "turned out"?
A. For exercise.

By Mr. SELLERS:

Q. Turned out for exercise; what was the name of the trainer?
A. Mr. Grady, I believe, had him in charge then.
Q. What was he doing with him, how was he training him, do you know?
A. I don't know.

43 Mr. SHIELDS: He does not say he was "training" him.

By the COURT:

Q. How was he exercising?
A. Walking around, running around.

By Mr. SELLERS:

Q. Walking around and running around, was it on a track, exercising him on a track?
A. No, sir.
Q. Where was he exercising him?
A. In a paddock.
Q. Was not he ever put on a track at all?
A. Not after the accident.
Q. I do not mean to run a race.
A. Not after the accident.
Q. I do not mean since the accident has he been put on a track or the purpose of running a race, but has not he been exercised on track since the accident?
A. No, sir.

Q. And how fast can he go now, do you imagine; since the accident can he go faster than a walk?

A. Just a little.

Q. In your opinion, just a little faster than a walk?

A. Not much better; no good for racing in no way, shape or form.

Q. Not good for racing, but now just for ordinary driving, and so forth, is he not fit for that purpose?

A. No, sir.

44 Q. Do you think or not that this horse cannot go outside of a walk?

A. He can go outside of a walk.

Q. How much faster than a walk? Give it to us now—how many miles an hour?

A. I can't say.

Q. You do not know. That is a definite answer.

A. I don't know.

Q. Therefore it may be possible that he can go several miles an hour and you do not know it, is that right?

A. Yes, I don't know.

WILLIAM HUGHES, sworn.

By Mr. SHIELDS:

Q. What is your business?

A. Keep a hotel.

Q. Where?

A. Ardmore, Montgomery county.

Q. And who is Mr. Fleming?

A. He is a partner of mine.

Q. And you are trading as Hughes & Fleming?

A. Hughes & Fleming.

By the COURT:

Q. A partner of yours in the hotel business?

A. Yes, an owner of property, not in the hotel business.

By Mr. SHIELDS:

Q. You are the owners of this horse, you and Mr. Fleming?

45 A. Mr. Fleming and I.

Q. How long had you owned Montauk?

A. I bought Montauk the first or second week in June, I don't know which it is.

Q. 1900?

A. 1900.

Q. How old was he?

A. Between four and five.

Q. Who did you buy him from?

A. Bought him from George Garth.

Q. How long had he been racing to your knowledge?

A. Well, he came to Belmont some time in April from Alabama, to be trained.
Q. From Alabama?
A. Yes, sir.
Q. What was his record?
A. I don't know whether or not he had any record before he got the record the day I bought him, that was sixteen and a quarter.
Q. The day you and your partner bought him, sixteen and a quarter?
A. Yes, sir.
Q. Was he sound?
A. He was sound; he hadn't a pimple on him.
Q. Where did you ship him from?
A. Which time?
Q. When you shipped him on at the time of the trouble,
46 at the time of the accident?
A. Shipped him from Island Park, New York.
Q. That is Albany, New York?
A. Albany to Cynwyd.
Q. Over the Pennsylvania?
A. Yes, sir.
Q. When did you last see the horse?
A. I seen the horse last——
Q. No, I mean prior to the shipment from Albany?
A. Two weeks before, I think.
Q. Was he in sound condition at that time?
A. Sound, all right.
Q. After the accident did you see him?
A. I seen him three days afterward.
Q. Three days after the accident?
A. Yes, sir.
Q. What was his condition then?
A. He was a wreck.
Q. What was the matter with him?
A. He had his tail broke and hip down, knocked off or down, whatever you should call it.
Q. And what else?
A. And he had a spavin throwed on the hind leg.
Q. How big was it?
A. That big a spavin (illustrating).
Q. Was he attended by a vete-nary surgeon?
A. He was attended by the railroad doctor.
47 Q. That was the railroad horse doctor?
A. Yes, sir.
Q. Was he attended by any veter-nary surgeon for you?
A. None at all, we had one to look at him.
Q. You had one look at him?
A. Yes, sir.
Q. But the horse was attended by the veterinary surgeon of the Pennsylvania Railroad Company?

A. Yes, sir.

Q. How long did that doctor of the railroad company attend him?

A. He is supposed to be attending him yet; I never discharged him; I told him to attend to him.

Q. The accident occurred nearly a year ago?

A. 12th of August.

Q. Is the horse in any better condition now?

A. A little bit of the stiffness is out of him.

Q. Some of the stiffness. Is he of any value at the present time?

A. None at all.

Q. You have bought and sold horses?

A. I bought a few.

Q. And you have seen them bought and sold?

A. Yes, sir.

Q. What was the value of this horse in the market, the market value of this horse?

A. When he was hurt?

Q. Yes.

48 A. Anywheres from twelve to twenty thousand dollars.

Q. And what is the value at the present time? I understand you to say nothing.

A. $2.50.

Cross-examined.

By Mr. SELLERS:

Q. Did you swear to the statement filed in this case?

A. I would have to see it first.

Q. No, Mr. Fleming is the one who swore to it. Mr. Fleming is your partner, and co-plaintiff in this suit?

A. Yes, sir.

Q. In the statement sworn to by Mr. Fleming, as plaintiff in this case, he swore that the value of that horse was ten thousand dollars; now you value it at a higher value than your partner, is that right?

A. I say it was worth anywheres from twelve to twenty thousand dollars.

Q. Then, as I say, you think that your partner undervalued this horse when he filed that statement?

A. I didn't know what he had valued him at.

Q. You are now told it was ten thousand dollars, and your opinion is it was worth more than ten thousand dollars, was it?

A. Yes, sir.

Q. You heard Mr. Wilkie testify. About what speed could that horse go at the present time?

A. At present?

49 Q. Yes.

A. Oh, I couldn't tell.

Q. I mean can he go faster than a walk?

A. Oh, yes, but he is lame.

Q. Of course he is not fit as a race horse?
A. He is lame.
Q. He is not fit as a race horse, but he has some speed in him, has he not?
A. Certainly, all horses have.
Q. Not as a race horse, but I mean as an ordinary horse.
A. He can hobble along the road a little faster than a walk, but I don't know what speed he would make, he is a lame horse and there ain't much speed in a lame horse.
Q. What did you pay for this horse?

Mr. SHIELDS: That is objected to.
The COURT: He bought it within what time of the occurrence, within a short time?

By Mr. SHIELDS:

Q. What day did you buy the horse?
A. I bought him the first or second week in June.

The COURT: And this accident happened in August?
Mr. SHIELDS: 12th of August.
The COURT: Where a man in a highly specialized kind of expert knowledge testifies in general as to the value in August, it seems to me that by way of critical comment it may be something to determine the probability of one figure or another of the market value by the price that he actually brought within sixty days.

Mr. SHIELDS: Go ahead.

By Mr. SELLERS:

Q. What did you pay for this horse?
A. Over six thousand dollars.
Q. The horse cost you over six thousand dollars?
A. Yes, sir.
Q. Who did you buy the horse of?
A. George Garth; in money and trade the horse cost me over six thousand dollars.
Q. How much did you give him in cash?
A. Four thousand dollars.
Q. Four thousand dollars in cash and then you gave him another horse?
A. I paid $1750. for it in Kentucky, and shipped her home and kept her all winter.
Q. You gave him another horse of the value of $1750.?
A. That I paid $1750. for.
Q. And you purchased it in June, 1900, and the accident happeded in the following August?
A. Yes, I purchased him the day he made his mark.

By the COURT:

Q. You purchased him after the record at Point Breeze had been made?

A. I purchased him just before it.

Q. Just before it?

A. Yes, sir.

51 Q. You purchased him before he ran?

A. Yes, he went one heat and I bought him when he came in.

Q. When is the record made?

A. When they come under the wire, when they race.

Q. There was one heat?

A. There was one heat.

Q. You saw him run?

A. Yes, sir.

Q. And you then bought?

A. I bought him.

Q. And then when is the record made, at the same time?

A. I think he made it in the second heat, I don't think it was the first heat.

Q. In the second heat?

A. It might have been the first heat, I don't know.

Q. How?

A. I don't know whether it was the first or second, but I bought him after he had went one heat, and then he finished the race.

Q. Do you remember whether his record was or was not known at that time?

A. I don't think he had a record, I don't know.

Q. I mean his record on that event there; he made a record there within a minute?

A. He got a record there.

Q. Was that a minute before or a minute after you bought?

A. I don't know whether it was the first heat or a second

52 heat he got his record.

Q. You do not know; you might have known that record when you bought?

A. I know what he got there.

By Mr. SELLERS:

Q. You say you saw the horse first go this heat before you bought him?

A. I seen him go one heat before I bought him.

Q. And he did that heat in two sixteen?

A. I am not sure whether that heat was in two sixteen or not.

Q. Can you recall what it was?

A. No.

Q. Mr. Wilkie said this horse made a record at Point Breeze of two sixteen; can you tell when he made that record?

A. The day I bought him, two sixteen and a quarter.

Q. After you bought the horse that day——
A. He finished the race.
Q. He finished the race?
A. He went one heat and then I bought him, and then he went two more.
Q. Then he went two more heats the same day?
A. Yes, same race.
Q. And you do not remember which heat he made that record?
A. No, I don't.
Q. Do you remember his speed for the three heats, do you remember what the three records were?
A. No, sir.

53 Re-direct examination.

By Mr. SHIELDS:

Q. Do you recall how much money you expended in the training of this horse in addition to the six thousand dollars that he cost you?

(Objected to. Question withdrawn.)

Q. How many stakes, and what were the value of them, that this horse was entered to race?

(Objected to. Question withdrawn.)

Q. You said that you saw him pace in two sixteen and a quarter?
A. Yes, sir.
Q. That was when you bought him?
A. The day I bought him.
Q. Or after you bought him——

(Objected to as leading.)

A. It was the day I bought him.
Q. How fast did you see him pace after you bought him?
A. Two-eight and a half.
Q. How long after you bought him did you see him pace in two-eight and a half?
A. Less than three weeks.

By the COURT:

Q. That two-eight and a half means what, a half miles or a whole mile?
A. A whole mile.

54 BENJAMIN F. A. FLEMING, sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Hotel business.
Q. You are a partner of the gentleman who was just on the stand?

A. In property I am, yes.
Q. In this property?
A. Yes, sir.
Q. That is to say, in this horse?
A. Yes, sir.
Q. How long had you known the horse Mantauk?
A. Well, I saw him I think the first week Mr. Garth shipped him to Belmont, that was about April some time.
Q. Of 1900?
A. Yes, sir.
Q. How old was he?
A. He was between four and five years old.
Q. Did you see him perform?
A. I did.
Q. What did you see him do?
A. I saw him step a mile in a little better than eight and a half; my watch caught him two-eight and a quarter, and the last quarter of that mile in thirty seconds, a two mile shot.
Q. Prior to this accident was he sound?
A. He was perfectly sound.
Q. You have bought and sold horses?
55 A. I have.
Q. Race horses?
A. Yes, sir.
Q. Seen them bought and sold?
A. Yes, sir.
Q. You know their market price at the time the horse was injured?
A. I do.
Q. In August, 1900?
A. Yes, sir.
Q. What was the value of this horse in your opinion, at the date of his injury?
A. Well, I think I valued him very low at ten thousand dollars, very low.
Q. What is he worth now since the injury?
A. Oh, he is worth $2.50, that is if he was skinned.
Q. Practically nothing?
A. Yes, sir.
Q. Excepting for a dead horse. Was the horse attended after the accident?
A. He was attended by Dr. Cullen.
Q. What did you notice was the trouble with the horse after the accident?
A. Well, he couldn't hardly hobble, couldn't get along at all, his tail was broke, his hip was knocked off, and his back was sprained, and he had a thorough-pin or a bog-spavin; I think his leg
56 was that big round (illustrating) the first time I saw him after the accident, that was the morning of the accident.
Q. Was he attended by any veterinary surgeon?

A. Not at the time I saw him.
Q. Was he afterwards?
A. Yes, sir.
Q. Who was he, what doctor?
A. Dr. Cullen took care of him for the railroad company.
Q. He was sent there and employed by them?
A. Yes, sir.
Q. To look after the horse?
A. Yes, sir.
Q. Has he attended him since?
A. Not to my knowledge.
Q. Have you had any doctors look at him, any veterinary surgeons, with the hope of getting him cured?
A. I had one to look at him before I would unload him, and he advised me not to unload him off the car, and the railroad company took him in charge, and since that I took Dr. Bridge and this same doctor that saw him the day of the accident to where the horse was last week, and they looked him over; we have them here.
Q. You have them here in court?
A. Yes, sir.

Cross-examined.

By Mr. SELLERS:

Q. Will you sell that horse for $2.50?
A. Sell him for anything.
Q. Will you sell him for $2.50?
57 A. That is another consideration.

ROBERT J. FOX, sworn.

By Mr. SHIELDS:

Q. What is your profession?
A. Vert-inary surgeon.
Q. You have been practicing your profession how long?
A. Ten years, you might say.
Q. Were you called in professionally to see the horse Montauk?
A. I was.
Q. Will you describe his condition when you found him after this accident?
A. When I saw him on Sunday morning after the accident——
Q. Where was he?
A. At Cynwyd station, out on one of the branch lines of the Pennsylvania railroad.
Q. And in a car, or out of it?
A. In a box car.
Q. What did you find?
A. I found him suffering from intense pain and great agony, with broken tail, and the ligaments of the hock were ruptured, and in a very bad condition. His lumbar vertebræ was badly strained,

that is, the back across the kidneys, and his right hip, the corner of it was broken off.

Q. The corner of the right hip broken off?

A. Yes, sir.

Q. And what else?

A. That is about all, with the exception of his shuffling.

58 Q. When did he spring his spavin?

A. That was evidently done when he had this jar, this jar that he had at that time.

Q. You have heard of the accident, heard of the collision?

A. Yes, sir.

Q. Could that have produced what you observed in this horse?

A. Undoubtedly so, yes.

Q. Those ailments are traumatic?

A. Yes, sir.

Q. How did you diagnose the case, as curable or incurable?

A. I diagnosed it as incurable.

Q. Incurable?

A. Yes, sir.

Q. Have you seen him recently?

A. I have, yes, sir.

Q. In your opinion was that a true diagnosis?

A. Yes, sir.

Q. What is his condition now?

A. His condition now is practically a cripple.

Q. Is he of any value at all?

A. No, he is not.

Q. Can he ever be cured?

A. No, he cannot be made sound, in my opinion.

A. Hopelessly incurable?

A. Yes, in my opinion, in my judgment.

A. In your opinion?

59 A. Yes, sir.

Q. You were in the habit of treating race horses?

A. Yes, that is mainly my practice.

Q. That is mainly your practice?

A. Yes, sir.

Q. And therefore you have an opportunity of knowing them and meeting them continuously?

A. Every day most.

Q. You know the value of them?

A. Well, yes, about the value, yes.

Q. What in your opinion was the value of this horse Montauk before the accident?

By Mr. SELLERS:

Q. Did you see this horse before the accident?

A. Before the accident?

Q. Yes.

A. No.

Mr. S-LLERS: Then I object to his expressing an opinion.

(No cross-examination.)

CHARLES A. BRIDGE, sworn.

By Mr. SHIELDS:

Q. You are a veterinary surgeon?
A. Yes, sir.
Q. And have been practicing your profession how long?
A. Fifteen years.
60 Q. Were you called recently to see the horse Montauk?
A. Yes, sir.
Q. Where did you find him?
A. Out the other side of Norristown at a place called Hickorytown.
Q. Was Dr. Fox with you?
A. Yes, sir.
Q. The gentleman who was just on the stand?
A. Yes, sir.
Q. Did you make an examination?
A. I did.
Q. With the expectation of testifying?
A. Yes, sir.
Q. What did you find is the condition of the horse at the present time?
A. Practically worthless.
Q. Will you tell us why?
A. He has a hip-down on the right side, he has a fracture of the, to put it in plain English, the tail, and a thorough-pin, a bone spavin, on the right hind leg.

By the COURT:

Q. What is a bone spavin?
A. That is an enlargement of the hock, a bone deposit.

By Mr. SHIELDS:

Q. Is this enlarged appreciably?
A. Yes, sir.

61 By the COURT:

Q. That is produced by violence?
A. Yes, sir.
Q. Is it curable?
A. No, incurable.

By Mr. SHIELDS:

Q. Did you meet the Pennsylvania railroad veterinary surgeon out there?
A. No.

Q. You didn't happen to meet him?
A. No.
Q. Dr. Cullen?
A. No.
Q. You know him very well?
A. I know of him.
Q. He is here?
A. I don't know.

(No cross-examination.)

GEORGE M. GARTH sworn.

By Mr. SHIELDS:

Q. What is your business?
A. I breed and develop horses; I have a farm in Alabama and I breed and develop horses, race horses.
Q. Where are you located?
A. I am located on my farm during the winter months, and I ship my horses east in the summer months.
62 Q. What part of Alabama?
A. Cortland, Lawrence county.
Q. You have been in that business how long?
A. I suppose about ten years, nine or ten years, something of that sort or like that.
Q. Did you own this horse Montauk?
A. I did.
Q. How long?
A. I bought him when he was three years old at the Jewell farm sale; I shipped him to my farm and kept him until the spring he was five, and I shipped him East, the spring he was five, to Belmont park, about the middle of May; I shipped him from home about the 8th, and it took about four or five days, about the 12th or 13th.
Q. Of May, 1900?
A. Of May, 1900. I shipped him—re-shipped him to Baltimore, started him twice in races there and then shipped—then led him across the road to Point Breeze track, and started him in a race there, which was the time I sold him to Messrs. Hughes & Fleming.
Q. How was he sired?
A. He was sired by Brownheld, two-twelve and a half, the only sire of a two minute harness horse, one-fifty-nine and a quarter, Star Pointer.
Q. Standard bred, the sire?
A. The sire was standard, and under the highest rules, that of production and that of lineage or inheritance.
63 Q. Does being standard bred add to the value of a horse?
A. Exceedingly so, very much.
Q. Do you know any other get of this sire other than Montauk?
A. Elastic Pointer sold as a blind horse by the same sire last year.

(Objected to by Mr. Sellers.)

Q. Did you see this horse after he had made the record of two-sixteen and a quarter?

A. I did; I finished the race with him after the—it was sixteen and a quarter or sixteen and a half, the year books will bear it out; that is immaterial, however, the fraction of a second.

Q. What in your opinion was that horse worth in August, if sound?

A. It seems to me that I can more intelligently state to the satisfaction of the judge and jury by giving the price of a horse by the same sire——

Mr. SELLERS: I object to having that price given.

A. (continued.) I would regard him surely worth ten thousand dollars, surely worth that; I think a man would be safe in that proposition.

Q. And you have dealt in race horses for how many years?

A. I have dealt in race horses for about ten years.

Q. Buying and selling them?

A. Buying and selling them.

Q. You spoke of a blind horse——

64 A. By the same sire.

Q. By the same sire, and blind?

A. Yes, sir.

Q. Did you see that horse sell in the market?

(Objected to by Mr. Sellers.)

Q. In your opinion, I understand you to say, this horse was worth ten thousand dollars at the lowest estimate?

A. Yes, sir.

Cross-examined.

By Mr. SELLERS:

Q. You sold this horse directly to Mr. Hughes yourself?

A. I did.

Q. Did you drive him the day he made the record of two-sixteen?

A. I did.

Q. That was after he had made that record that you had sold him to Mr. Hughes?

A. Immediately after he took the first heat in that time that I sold him to Messrs. Hughes and Fleming, yes, sir.

Q. And what did you sell him for?

A. I got four thousand dollars in money, and I got a chestnut sorrel mare, a chestnut mare by a Kentucky sire, at $1750, that they showed me their receipt that they had received from Scott Newman, Jr., of $1750, and then they turned me over the amount of money that they had paid out—a receipt from the several associations, or a statement taken from the receipts from the several associa-

65 tions for stake money they had paid out on this mare, they turned that money that they had paid out on this mare,

and the mare that they had paid $1750 for, and four thousand dollars in cash they gave me.

Q. Those stake moneys that you referred to, what were they?

A. Really, I could not intelligently answer that, because I did not foot that amount up, perhaps Mr. Fleming has that on his book and can produce that.

Adjourned until Wednesday, May 8th, 1901, at 10 a. m.

Second day.

WILLIAM HUGHES and BENJAMIN F. A. Fleming, Trading as Hughes & Fleming, v. THE PENNSYLVANIA RAILROAD CO. } No. 39, C. P. No. 2, S. 1900.

PHILADELPHIA, *May 8th*, 1901.

THOMAS S. YOUNG, sworn.

By Mr. SHIELDS:

Q. What is your business?

A. I am in the horse business at 142 North Broad street.

66 Q. And dealing in high class horses?

A. High class horses, yes sir.

Q. And you have been in that business how long?

A. About twenty-three years.

Q. Did you know the horse Montauk?

A. Yes, sir.

Q. Prior to his injury?

A. Yes, saw him at Point Breeze when he got his record there, and saw him once or twice at Belmont before that.

Q. What in your opinion was the value of that horse?

A. Well, he was an awful fast horse and I think he was worth anywheres from twelve to fourteen thousand dollars.

Cross-examined.

By Mr. SELLERS:

Q. What was the record you saw him make?

A. Sixteen and a fraction, I don't remember just what the fraction was.

Q. And that was his record was it?

A. That was his record.

Q. When was that done, do you know?

A. I don't remember the exact date, it was the meeting they had at Point Breeze in the spring.

By the COURT:

Q. Is that a high record?

A. It is not a high record, but the way he finished the mile
67 would convince anybody that he was an awful fast horse; he just played with them, just beat them in the last quarter as if he was a free-for-all horse; I don't think there ever was a horse that ever closed up a gap like this horse did that day; everybody was astonished at the speed he showed.

Q. It was the speed in the last quarter?

A. Yes, in the last two quarters, you might say.

By Mr. SELLERS:

Q. Was that his only race that you know of?

A. Oh, no, from what I read in the papers of other races, he was in, when he got a—I only read in the papers about him after that.

By Mr. SHIELDS:

Q. Was he well known among horsemen?

A. Well known; everybody knew about him.

By the COURT:

Q. He was a horse of reputation?

A. Yes, sir.

WILLIAM MCFARLAND, sworn.

By Mr. SHIELDS:

Q. What is your business?

A. Selling horses.

Q. Where is your place of business?

A. McFarland's Exchange, Broad and Cherry.

68 Q. You have an exchange there for the purchase and sale of horses?

A. Yes, sir.

Q. Did you know the horse Montauk before he was injured?

A. Yes, sir.

Q. What in your opinion was his value?

A. Anywhere from ten to twelve or thirteen thousand dollars.

Cross-examined.

By Mr. SELLERS:

Q. Did you ever see him race?

A. I saw him race at Point Breeze.

Q. You saw him make that mile in two-sixteen?

A. Yes, sixteen and a fraction, I think.

By the COURT:

Q. What did you say was his value?

A. Anywhere from ten to twelve or thirteen thousand dollars.

By Mr. SELLERS:

Q. Have you seen the horse since the accident?

A. No, never saw him except at Point Breeze in the race.
Q. Do you know anything about Mr. Fleming or Mr. Hughes purchasing that horse at that date; did they purchase it that day, as far as you know?
A. I understood so, yes.

69 GEORGE W. COOK, sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Stable keeper.
Q. You have bought and sold horses?
A. Yes, sir.
Q. For how long?
A. I have been in the business for thirty-five years.
Q. Did you know this horse?
A. Yes, sir.
Q. What in your opinion was his value?
A. I thought he was a cheap horse, when I saw him step at Point Breeze, at ten thousand dollars.

Cross-examined.

By Mr. SELLERS:

Q. Did you see him make that mile in two-sixteen?
A. Yes, sir.

JOSHUA EVANS, sworn.

By Mr. SHIELDS:

Q. How long have you been connected with the horse business?
A. Thirty-five years.
Q. During that time you have bought and sold a great many horses?
70 A. Yes, sir.
Q. Did you know the horse Montauk?
A. Yes, I seen him at Belmont and Point Breeze.
Q. What in your opinion was his value?
A. Well, I should judge anywheres from twelve to fourteen thousand dollars.
Q. From twelve to fourteen thousand dollars?
A. Yes, sir.

(No cross-examination.)

WESLEY T. WRIGHT, sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Harness and turf goods.
Q. Have you bought and sold horses?
A. Yes, sir.

Q. Did you know the horse Montauk?
A. Yes, sir.
Q. What in your opinion was the value of that horse?
A. I valued him at ten thousand dollars.
Q. You valued him at ten thousand dollars?
A. Yes, sir.

Cross-examined.

By Mr. SELLERS:

Q. Did you ever own any horse that made records of two-sixteen?
71 A. Not records, but I have owned horses that went faster than that.
Q. What horse did you own that went faster than that?
A. I owned Albert Allen, faster than sixteen and a quarter.
Q. What did Albert Allen go at?
A. He went in fifteen and three-quarters more than once.
Q. What did you pay for him?
A. I dealt for him.
Q. What was it sold for, what did that horse bring at a sale?
A. I can't tell you that for this reason, I dealt in horses, I dealt other horses.
Q. What do you know about the value of that horse which you speak of? You are called here as an expert, and your opinion is asked upon your experience with horses. I want to see just what your experience has been, and what you have bought and sold of faster horses, and you mention one which went in two-fifteen; you say you did not buy that horse yourself, but you dealt it in for some one else?
A. No, I dealt in him for myself, but didn't buy to race, but bought as a road horse.
Q. What did it cost you as a road horse?
A. I judge it cost me fifteen hundred dollars.
Q. What became of him?
A. I have had him until the past six weeks, I sold him, traded him within the last six weeks.
Q. What did you sell him for within the last six weeks?
72 (Objected to. Objection overruled.)
A. I dealt him again.
Q. For how much?
A. Well, I got about seven hundred dollars money and dealt him for other goods, harness and wagons and horses.
Q. What was the aggregate valuation of the other goods?
A. Seven hundred and fifty dollars.
Q. And that horse went in two-fifteen?
A. He had two years ago, yes.
Q. What did he do in the last two years, what has happened to that horse that has reduced his value?

A. I met with an accident, hit by a trolley car, marked him and cut him up considerably, and I consider that depreciated his value five hundred dollars for that one accident.

Q. What other horses have you owned that have made records? Have you owned any other horses that have made records?

A. Yes, sir.

Q. Which horse?

A. Loudell.

Q. What was that record?

A. At the time I owned him he had a record of twenty-five and a half.

Q. What did you pay for that horse?

A. Nine hundred dollars.

Q. What did you sell him for?

A. I dealt him for other horses.

Q. What was the aggregate value of the things that you
73 took in exchange for that horse?

A. I got fifteen hundred dollars for him.

THOMAS GRADY, sworn.

By Mr. SHIELDS:

Q. What is your business?

A. Trainer of horses.

Q. You have been a trainer of horses for how long?

A. Twenty-five or twenty-six years.

Q. Did you know the horse Montauk?

A. Yes, sir.

Q. Did you have charge of him professionally?

A. Yes, sir.

Q. For how long?

A. Well, from about the second week in June, first or second week in June, up until he got hurt in August.

Q. And then you handled him for a matter of a month or two?

A. Yes, sir.

Q. Did you drive him frequently?

A. Yes, sir.

Q. What speed did he show?

A. He showed me a mile in seven and one-quarter.

A. Showed you a mile in seven and one-quarter?

A. Yes, sir.

By the COURT:

Q. A mile in what?

A. Two-seven and one-quarter.

74 By Mr. SHIELDS:

Q. More than once?

A. That is the only time ever I drove him to see how fast he could go.

Q. What was the age of the horse?
A. Five years old.
Q. He was young and untried, was he not?
A. Yes, sir.
Q. What you call a green horse?
A. What you would call a green horse; he had a record of sixteen and one-quarter when the old gentleman bought him, the day he bought him.

By the COURT:

Q. Is two-seven and a quarter a high record?
A. Very, yes, sir.
Q. Very high?
A. Yes, sir.
Q. At the date when he did that what was the high record?
A. Oh one-fifty-nine and three-quarters, or one-fifty-nine and a half, or something like that.
Q. That was the top notch?
A. That was the top notch, by a horse bred about—that is, sired by the same horse.

By Mr. SHIELDS:

Q. How was this horse bred?
A. He was sired by Brownheld, the sire of Star Pointer; his dam I don't remember.
Q. Was that regarded as standard?
75 A. Very, very high.
Q. Very high standard?
A. Yes, sir.
Q. Did you see the horse after he was hurt?
A. Yes, sir.
Q. Did you attempt to do anything with him?
A. No, they came to me and wanted me to take him out of the car, the station agent did, and I looked at the horse, and I says, "I won't take him," and then I went to get Mr. Fleming; I got Mr. Fleming, the owner of the horse, and I brought him down and he refused to take him.
Q. What was the matter with him?
A. Well, he was all scarred up, and he had a hock on him as big as that (illustrating), his tail was broken, the point of one hip was down; and he stood just all humped like a horse would that was all pushed together, you know, and they took him back to Fifty-second street, and Mr. Cullen took him in charge.
Q. That is, Dr. Cullen, the Pennsylvania Railroad doctor?
A. Yes, sir.
Q. How long was the horse on the cars?
A. I shipped him on Friday night at about half past six from Albany; we got in Weehawken, that is, in Jersey City, at four o'clock in the morning; at four o'clock, or at six o'clock that morning, they turned him over to the Pennsylvania railroad, or tend-

ered him, brought him out on the meadows there, on a side track they have got, and they let him stand there from six
76 o'clock until ten o'clock that night before they touched him again.

Q. From six o'clock in the morning?
A. From six o'clock in the morning until ten o'clock that night.
Q. He stood in the yard?
A. He stood in the yard.

By the COURT:

Q. What yard?
A. The yard of the Pennsylvania railroad.
Q. Where?
A. In Jersey City.

By Mr. SHIELDS:

Q. How long was he in the yard in Philadelphia?
A. Then they hitched on to him and brought him to Philadelphia and landed him up at Fifty-second street.

By the COURT:

Q. When?
A. There they set him on a side track.
Q. Do you know when they got to Fifty-second street?
A. Saturday morning at four o'clock.

By Mr. SHIELDS:

Q. Saturday or Sunday?
A. On Sunday morning at four o'clock.
Q. How long did he remain there?
A. He remained there from four o'clock in the morning.

By Mr. SELLERS:

Q. Before you continue any further, are you testifying now
77 of your own knowledge or of what you learned from others?
A. I am testifying what the young man told me that was in charge.

By Mr. SHIELDS:

Q. Did not you get it also from the railroad people?
A. Yes.

Mr. SELLERS: I object to your testifying to anything except what you know of your own knowledge, about the movements of that horse.

The COURT: That is a good objection.

Mr. SHIELDS: If it is objected to I will not press it.

Mr. SELLERS: It is objected to.

By Mr. SHIELDS:

Q. How long was the horse on the car after he was hurt?

By Mr. SELLERS:

Q. Do you know of your own knowledge how long it was?
A. Yes. Well, no, I don't. At seven o'clock——

The COURT: If you do not know do not testify.

A. (continued). I know this much, at seven o'clock the young man in charge of him came and got me, and about ten o'clock——

By Mr. SHIELDS:

Q. Seven o'clock in the morning?
A. Yes, sir.
Q. And at ten o'clock?
A. At ten o'clock the railroad company, the agent of the railroad station came again and he wanted me to take the horse off, and let the case be dependent. I says, "No, the owner wouldn't
78 take him off and I shall not."
Q. Have you seen the horse since that?
A. I have had him in charge pretty much ever since, all but the time Mr. Cullen, excepting the time Mr. Cullen had him.
Q. He is the veterinary surgeon for the railroad company?
A. Yes, sir.
Q. In your opinion, from your knowledge of horse flesh, is it possible for this horse ever to be cured?
A. I would not think so, no.
Q. In your opinion is he worth anything now?
A. Only what a lame horse would be worth, from fifty to seventy-five or one hundred dollars to work.
Q. To work?
A. Yes, sir.
Q. But a lame horse is not a very good worker?
A. No, that is right.
Q. What in your opinion was the value of this horse, having handled him and knowing the value of horse flesh?
A. I thought this horse ought to be worth anywhere from eighteen to twenty thousand dollars; I had an idea I could drive this horse last fall a mile in two minutes.
Q. That is your belief?
A. Yes, I drove him a quarter in thirty seconds.

Cross-examined.

By Mr. SELLERS:

Q. Is that your signature?

(Paper shown witness.)

A. Yes, sir.
79 Q. That is the shipping receipt that you signed?
A. Yes, sir.
Q. Do you know whether any insurance was effected on this horse?

A. No, I don't.
Q. You say you do not know?
A. No, sir.
Q. Have you the bill of lading under which this horse was shipped?
A. No, that is the only bill I had.
A. But was there not also a bill of lading sent?
A. Well, here it is, I think (indicating).
Q. This is the bill of lading, it is not, under which this horse was shipped?
A. Yes. Just a minute, let me see; yes, that is it.
Q. Do you know what were the freight charges paid on this horse; do you know what was the amount of the freight charges paid on this horse?
A. Yes.
Q. How much?
A. Twenty-six dollars and some cents, I don't remember the charge.
Q. Twenty-six dollars and some cents?
A. I think there was some cents to it; now I don't just remember; they charged, you know, for four thousand pounds; this horse weighed about twelve hundred or eleven hundred. They charged pretty well.
80 Q. What is the usual charge when a horse is shipped first class, do you know?
A. The usual charge?
Q. Yes.
A. I would not think it could be any more than that unless you shipped him by express; they charged four thousand pounds for this horse; the horse will weigh about ten or eleven hundred pounds, maybe eleven hundred and fifty.
Q. This was not a first class charge, first class rate of freight for the transportation of this horse. Was not this a reduced rate?
A. Not that I know of; I would not consider it so, and I don't believe you would, if you were shipping many horses about the country.
Q. You do not know whether any insurance has been paid on this horse?
A. I don't know.

FRANK H. JACKSON, sworn.

By Mr. SHIELDS:

Q. What is your business?
A. Horse training.
Q. And are you also acquainted with the value of horses?
A. Yes, sir.
Q. In recent years?
A. Yes, sir.
Q. Did you know this horse Montauk?

81 A. I did.
Q. What in your opinion was his value?
A. I would value a horse like Montauk, when I saw him at one time, at least fifteen thousand dollars.
Q. Fifteen thousand dollars?
A. I think that I am justified in saying so.

Cross-examined.

By Mr. SELLERS:

Q. What is the greatest record that any horse ever made that you owned?
A. I never owned any.
Q. You never bought or sold a horse that made a record?
A. I have bought and sold, yes.

CHARLES B. MYERS, affirmed.

By Mr. SHIELDS:

Q. What is your business?
A. I have a public training stable.
Q. A public training stable?
A. Yes, sir.
Q. You have been handling fast horses?
A. Yes, sir.
Q. For how long?
A. About forty years.
Q. Did you see this horse Montauk?
A. Yes, sir.
Q. What in your opinion was his value?
82 A. I valued him from in the neighborhood of ten thousand to twelve th-usand dollars sure.
Q. Ten to twelve thousand dollars sure?
A. Yes, sir.
Q. What is it that makes a trotting horse like this valuable as compared with other horses.
A. Extreme speed, with a good actor.
Q. Extreme speed and a good actor?
A. And not out-classed.
Q. And that horse possessed all those qualifications?
A. All of them.
Q. He was green also, was he not?
A. Yes, sir.
Q. That was an additional qualification?
A. Certainly, age, soundness and everything combined.

Cross-examined.

By Mr. SELLERS:

Q. Have you ever owned any race horses?
A. Yes, sir.

Q. What was the best record any horse of yours ever made?
A. I have been so fortunately fixed that I have handled mostly for other people, although I have one now that can beat two-twenty, a young horse.
Q. What is the best record that any horse that you ever owned made?
A. Well, as far as my own horses, I never really owned entirely, but very few of them, myself.
83 Q. What is the best record that any horse that you ever owned made?
A. Two-twenty.
Q. What did you pay for that horse?
A. I bought him when he was considered nothing and made him.
Q. After you made him did you sell him?
A. No, sir.
Q. What became of him?
A. He went wrong; I sold him, yes, but I sold him as an out-classed horse, a cripple, no account for what I wanted; that is the reason I sold.

By Mr. SHIELDS:

Q. You have known some horses to sell for $250. and bring $25,000, have you not?
A. Yes, that is my business, to buy a horse and develop him.
Q. And develop him?
A. Yes, and when he is developed his speed makes his price.
Q. Some of the horses you made history were purchased for a song, were they not?
A. They are out-classed, they are no account, only as a gentleman's road horse.

By Mr. SELLERS:

Q. What horse do you know of that was purchased for $250* which subsequently sold for $25,000, mention one.
A. I won't pretend to do that just now, but then if you will give me a couple of hours, I will at least show you twenty. I will
84 give you J. I. C. he fetched one hundred, he was bought for one hundred dollars.

By Mr. SHIELDS:

Q. What did he sell for?
A. He had refused fifty thousand dollars for him.

By Mr. SELLERS:

Q. What horse was that?
A. J. I. C.
Q. You do not consider J. I. C. a good horse?
A. I don't? The best horse in his day on earth.

Mr. SHIELDS: The defendant admits that it is a Pennsylvania corporation. I desire that to go on the record, and we rest.

Mr. SELLERS: I would like to have Mr. Fleming recalled.

BENJAMIN F. A. FLEMING, recalled.

By Mr. SELLERS:

Q. Was there any insurance on this horse?
A. In what way?
Q. You know what it is to have insurance on a horse?
A. No, I never had him insured.
Q. Do you know whether anybody else had him insured?
A. Not to my knowledge.
Q. You do not know whether this horse was insured at all?
85 A. No.
Q. Do you know whether any money has been paid on that horse by any insurance company at any time?
A. Not as I know of.
Q. Not as you know of?
A. No, I never had any insurance.
Q. As far as you know of, you do not know of any insurance?
A. No.

WILLIAM HUGHES, recalled.

By Mr. SELLERS:

Q. Was there any insurance on this horse?
A. Not as I know of.
Q. You never got anything from any company on him?
A. No, I don't insure my buildings; I don't believe in insuring them.

Defendant's Testimony.

GEORGE J. COUGHTRY, sworn.

By Mr. SELLERS:

Q. On August 10, 1900, you were in the employ of the West Shore railroad at Albany?
A. Yes, sir.
Q. Will you please look at that and tell us what it is, and also say whether that is your signature?

(Paper shown witness.)

86 A. Yes, that is a live stock contract, a release between Thomas Grady and the West Shore railroad.
Q. It has been testified by Mr. Grady in this case that he paid twenty-six dollars and some cents freight charges on this horse; were those first class freight charges?

Mr. SHIELDS: That is objected to.

The COURT: That is rather leading.

Q. What are the usual freight charges from Albany to Cynwyd?
A. Well, I could not say as to that.
Q. What are the usual freight charges for the shipment of live stock?
A. Twenty per cent.
Q. Twenty per cent. of what?
A. Twenty per cent. higher than the usual tariff without a contract.
Q. Twenty per cent. higher?
A. Yes, twenty per cent.
Q. That is twenty per cent. on a hundred dollars.
A. Yes, sir.
Q. It has been testified by Mr. Grady that he paid twenty-six dollars freight charges; were those reduced freight charges?

Mr. SHIELDS: That is objected to.
The COURT: That question has been overruled as leading.

Q. Suppose that this horse had been shipped simply by a bill of lading without this paper, what would have been the freight charges on that?

87 (Objected to by Mr. Shields.)

Q. What are the charges under this paper?
A. They are twenty per cent. less than the tariff rates; under a live stock contract, the same as that is between the parties, they get a rate of twenty per cent. less than first class rates.
Q. Do you know what the first class rates are?
A. No, I do not.

(No cross-examination.)

GEORGE R. GRAHAM, sworn.

By Mr. SELLERS:

Q. By whom are you employed?
A. Pennsylvania railroad.
Q. In what capacity?
A. As a ticket agent and assistant to the agent.
Q. Do you know what the freight charges are from Cynwyd to Albany?
A. The freight charges from Cynwyd——

The COURT: You mean from Albany to Cynwyd?

Q. Are the freight charges from Cynwyd to Albany the same as they would be from Albany to Cynwyd?
A. They are the same thing.
Q. What are those charges?
A. The freight charges, first class rate, from Albany to Jersey City would be twenty-five cents a hundred, and from Jersey City to

Cynwyd, local rate would be twenty-four cents a hundred, as we have no rating that way for the West Shore road.

88 Q. What would be the rate of live stock shipped under such a contract as this?

A. It would be first class rate.

Q. Under this?

A. Under that reduced rate.

Q. Reduced rate?

A. Reduced rate, yes, sir.

Q. If a horse is valued at ten thousand dollars, and was shipped from Albany to Cynwyd under the rate that you have said, what would be the amount of freight charges?

A. I don't know exactly what would be the exact amount.

By the COURT:

Q. Did not you say the rates of freight were proportioned to the weight of the thing shipped? What do you mean by twenty-five cents a hundred?

A. A hundred pounds.

Q. That is, a hundred pounds weight of the thing shipped, that is forty-nine cents per hundred pounds. That would make nearly six dollars for a first class freight.

(No cross-examination.)

89 Mr. SELLERS: I offer in evidence the shipping receipt and also the bill of lading which has been identified and admitted. Those two are offered in evidence.

(The papers offered are as follows:

West Shore railroad.

N. Y. C. & H. R. R. Co., lessee.

Live Stock Contract.

ALBANY (CHURCH ST.) STATION, *Aug.* 10*th*,* 1900.

This agreement, made this ninth day of August 1900 by and between the New York Central & Hudson River Railroad Company, lessee of West Short railroad, hereinafter called the carrier, and Thomas Grady, hereinafter called the shipper:

Witnesseth: That the said shipper has delivered to the said carrier live stock of the kind and number, and consigned and destined by said shipper as follows:

Consignee, destination, etc.	Number and description of stock (shipper's load and count).
Thomas Grady, Cynwyd, Montgomery Co., Pa.	One horse & traps.
Advance charges $— Car. Nos. and initials —	(Revenue stamp.)

for transportation from —— to destination, if on the said carrier's line of railroad, otherwise to the place where said live stock is to be received by the connecting carriers for transportation to or toward destination and that the same has been received by said carrier for itself and on behalf of connecting carriers, for transportation, subject to the official tariffs, classifications and rules of the said
90 company, and upon the following terms and conditions, which are admitted and accepted by the said shipper as just and reasonable, viz:

That said shipper, or the consignee, is to pay freight thereon to the said carrier at the rate of — per — which is the lower published tariff rate upon the express condition that the carrier assumes liability on the said live stock to the extent only of the following agreed valuation, upon which valuation is based the rate charged for the transportation of the said animals, and beyond which valuation neither the said carrier nor any connecting carrier shall be liable in any event, whether the loss or damage occur through the negligence of the said carrier or connecting carriers, or their employees or otherwise.

If horses or mules—not exceeding one hundred dollars each.

If cattle or cows—not exceeding seventy-five dollars each.

If fat hogs or fat calves—not exceeding fifteen dollars each.

If sheep, lambs, stock hogs, stock calves, or other small animals—not exceeding five dollars each.

And in no event shall the carrier's liability exceed $1200 upon any car load.

That said shipper is to pay all back charges and freight
91 paid by said carrier or connecting carrier upon or for the transportation of said live stock.

That the said shipper is at his own sole risk and expense to load and take care of, and to feed and water said stock whilst being transported, whether delayed in transit or otherwise, and to unload the same, and neither said carrier nor any connecting carrier is to be under any liability or duty with reference thereto, except in the actual transportation of the same.

That the said shipper is to inspect the body of the car or cars in which said stock is to be transported, and satisfy himself that they are sufficient and safe, and in proper order and condition, and said carrier or any connecting carrier shall not be liable on account of any loss of or injury to said stock happening by reason of any alleged insufficiency in or defective condition of the body of said car or cars.

That said shipper shall see that all doors and openings in said car or cars are at all times so closed and fastened as to prevent the escape therefrom of any of the said stock, and said carrier or any connecting carrier shall not be liable on account of the escape of any of the said stock from said car or cars.

The said carrier or any connecting carrier shall not be liable for or on account of any injury sustained by said live stock occasioned by any or either of the following causes, to wit: Overloading crowding one upon another, kicking or goring, suffocating, fright,
92 burning of hay or straw or other material used for feeding or bedding, or by fire from any cause whatever, or by heat, cold, or by changes in weather, or for delay caused by stress of weather, or obstruction of track, by riots, strikes or stoppage of labor, or from causes beyond their control.

That in the event of any unusual delay or detention of said live stock, caused by the negligence of the said carrier, or its employees, or its connecting carriers, or their employees, or otherwise, the said shipper agrees to accept as full compensation for all loss or damage, sustained thereby the amount actually expended by said shipper, in the purchase of food and water for the said stock, while so detained. That no claim for damages which may accrue to the said shipper under this contract shall be allowed or paid by the said carrier, or sued for in any court by the said shipper, unless a claim for such loss or damage shall be made in writing, verified by the affidavit of said shipper, or his agent, and delivered to the general live stock agent of the said carrier at his office in New York, within five days from the time said stock is removed from said car or cars, and that if any loss or damage occurs upon the line of a connecting carrier, then such carrier shall not be liable unless a claim shall be made in like manner, and delivered in like time, to some proper officer or agent of the carrier on whose line the loss or injury occurs.

That whenever the person or persons accompanying said stock under this contract, to take care of the same, shall leave the
93 caboose and pass over or along the cars or track of said carrier, or of connecting carriers, they shall do so at their own sole risk of personal injury, from whatever cause, and neither the said carrier, nor its connecting carriers, shall be required to stop or start their trains or caboose cars at or from the depots or platforms, or to furnish lights for the accommodation or safety of the persons accompanying said stock to take care of the same under this contract.

And it is further agreed by said shipper, that in consideration of the premises and of the carriage of a person or persons in charge of said stock upon a freight train of said carrier, or its connecting carriers, without charge other than the sum paid or to be paid for the transportation of the live stock in charge of which he is, that the said shipper shall and will indemnify and save harmless said carrier, and every connecting carrier, from all claims, liabilities and demands of every kind, nature and description, by reason of personal injury sustained by said person or persons so in charge of said

stock, whether the same be caused by the negligence of said carrier or any connecting carrier, or any of its or their employés, or otherwise.

And Thomas Grady does hereby acknowledge that he had the option of shipping the above described live stock at a higher rate of freight according to the official tariffs, classifications and rules of the said carrier and connecting carriers, and thereby receiving
94 the security of the liability of the said carrier and connecting railroad and transportation companies, as common carriers of the said live stock, upon their respective roads and lines, but has voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY,
Lessee West Shore Railroad,
By A. T. BENJAMIN, *Station Agent.*

Witness my hand
THOMAS GRADY, *Shipper.*

Release for Man or Men in Charge.

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract without charge, other than the sum paid or to be paid for the carriage upon said freight train, of the live stock mentioned in said contract, of which live stock I am in charge, the undersigned does hereby voluntarily assume all risk of accidents or damage to his person or property, and does hereby release and discharge the said carrier or carriers from every and all claims, liabilities and demands of every kind, nature and description, for or on account of any personal injury or damage of any kind sustained by the undersigned so in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers, or any of its or their employees, or otherwise.

HARRY WILKIE,
Signature of Man in Charge."

95 West Shore railroad.

N. Y. C. & H. R. R. R. Co., lessee.

Uniform Bill of Lading Conditions.

1. No carrier or party in possession of all or any of the property herein described, shall be liable for any loss thereof or damage thereto, by causes beyond its control; or by floods or by fire; or by quarantine; or by riots; strikes or stoppage of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet, or decay; or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right in case of necessity, to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place
96 and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event. Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property.

4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be carried hereunder, shall have the privilege at its own cost of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for deviation, or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is an elevator may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of same kind, without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder. No carrier shall be liable for differences in weight or for shrinkage or any grain or seed carried in bulk.

97 5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination may be kept in the car, depot or place of delivery of the carrier at the sole risk of the owner of said property, or may be at the option of the carrier, removed and otherwise stored at the owner's risk and cost and there held subject to lien for all freight and other charges. The delivering carrier may make a reasonable charge per day for the detention of any vessel or car and for use of track after the car has been held forty-eight hours for unloading, and may add such charge to all other charges hereunder, and hold said property subject to a lien therefor. Property destined to or taken from a station at which there is no regularly appointed agent, shall be entirely at risk of owner when unloaded from cars, or until loaded into cars, and when received from or delivered on private or other

sidings shall be at owner's risk, until the cars are attached to, and after they are detached from, trains.

6. No carrier hereunder will carry, or be liable in any way for any documents, specie or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles, are endorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods, without previous full written
98 disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed without compensation.

8. Any alterations, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading shall be void.

9. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned (without any condition or limitation other than the name of a party to be notified of the arrival of the property) the surrender of this bill of lading properly endorsed shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

10. Owner or consignee shall pay freight at the rate herein stated, and all other charges accruing on said property, before delivery, and according to weights as ascertained by any carrier hereunder; and if upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.

99 11. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other water; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property. And any carrier by water, liable on account of loss of or damage to any of said property, shall have the full benefit of any insurance that may have been effected upon or on account of said property.

West Shore railroad.

N. Y. C. & H. R. R. R. Co., lessee.

Received, subject to the classification in effect on the date of issue of this bill of lading, at —— station Aug. 10, 1900, from Thomas Grady, the property described below in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said com-
100 pany agrees to carry to said destination, if on its road, otherwise to deliver to another carrier on the route of said destination. It is mutually agreed in consideration of the rate of freight hereinafter named, as to each carrier of all or any of said property over all or any portion of said route, to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (see conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns as just and reasonable.

Marks.	Description of articles.	Weight subject to correction.
Consignee Thomas Grady. Place Cynwyd. County Montgomery State Pa.	One horse & traps. Man in charge.	

(Revenue stamp.)

Route 12352 M. C.
Charges advanced $—
Car No. —

A. T. BENJAMIN, *Agent.*

(The signature of the agent here acknowledges only the receipt of the property, and the charges advanced, if any.)

The blank spaces below most not be filled up by the shipper.

The rate of freight from —— to —— is, in cents per 100 pounds:—

— times.	Second class —	Fifth class —
First class —	Third class —	Sixth class —
First class —	Fourth class—	Special class —

—— ——, *Agent.*

(The signature here acknowledges only the rate given.)

101 Received $— to apply in prepayment of the charges on the property described above.

—— ——, *Agent.*

(The signature of the agent here acknowledges only the amount prepaid.)

(On margin:) Not negotiable.—If the word "order" is written immediately before or after the name of the party to whose order

the property is consigned, the surrender of the bill of lading, properly endorsed, shall be required before the delivery of the property at destination, as provided by section 9 of the conditions of the uniform bill of lading, on the back hereof.")

Rates will be inserted by division freight agents at New York, Syracuse or Buffalo.)"

GEORGE R. GRAHAM, recalled.

By Mr. SELLERS:

Q. Can you explain to the court and jury what this $26. which was paid by Mr. Grady was paid for?

(Objected to.)

A. I received the shipment——

By the COURT:

Q. Did you make any arrangements with the party who paid?

By Mr. SELLERS:

Q. Did you receive the freight charges?

A. I received——

102 Q. From the party who paid it?

A. From the party who paid it.

The COURT: What was said between them?

Q. What was said?

A. There was not anything said except to pay the charges and get the receipt.

By the COURT:

Q. Let me understand that. A man ships a horse at Albany and he comes to Philadelphia to get a receipt for the horse, does he? Were you at Albany?

A. I was at—I signed the receipt for the charges.

Q. At Albany?

A. No, at Cynwyd, a receipt for the delivery of the traps, and collected the total amount of the freight charges.

Mr. SELLERS: This horse was sent C. O. D. and he collected the freight charges at Cynwyd; he collected from this man $26.

The COURT: He made no bargain with him; he had instructions from the Albany end what he was to collect, had he not?

The WITNESS: That was the instructions.

By Mr. SELLERS:

Q. What was that twenty-six dollars that was paid you for——

Mr. SHIELDS: What was said?

Q. This money was paid to you?

103 By the COURT:

Q. Was anything said between you two people on that occasion?
A. Mr. Grady didn't pay the money personally, his man in charge paid the money.
Q. Mr. Wilkie?
A. Mr. Wilkie.
Q. Was anything said?
A. Nothing said.
Q. Now let us see exactly what happened between you two people.

By Mr. SELLERS:

Q. What happened?
A. There was not anything happened except signing the receipt, and accepting the traps, and paying the charges.
Q. Do you know whether Mr. Wilkie, when this horse was paid for, paid for anything in addition to the freight charges?

Mr. SHIELDS: That is objected to.

Q. Do you know whether there were any charges asked of Mr. Wilkie other than that of the freight charges by reason of any other expenses?

The COURT: You can ask him whether he is familiar with the terms of this contract, and if so, what they were.

Q. Do you know whether any other expenses than the freight charges were incurred, of your own knowledge, and if so, whether they were paid for by anybody?

104 The COURT: No.

Mr. SELLERS: Cannot I ask this man if in Cynwyd he asked for any additional charges for anything incurred at Cynwyd?
The COURT: Whatever was said between the two people he can testify to.

Q. Did you or did you not——

The COURT: What was said, and what was done, the whole conversation, he had no other business with Wilkie but one thing; what was said and what was done?
Mr. SELLERS: Cannot I ask him whether he imposed any additional charges on him?
The COURT: No, you cannot suggest things to him.
Mr. SELLERS: I now wish to ask the witness——
The COURT: Put your question.
Mr. SELLERS: The counsel for defendant desires to ask the witness whether any charge other than freight charges was imposed upon Mr. Wilkie or the owner of this horse?
Mr. SHIELDS: I do not object to it. Let him answer yes or no.

Q. Was there?
A. There was a seven dollar charge on the movement from Island Park to Albany, with switching charges.

Q. And was that item covered by the twenty-six dollars that was paid?

A. That was in with the $26.00.

Q. That was paid you?

105 A. That was paid.

By the COURT:

Q. What was in there? There was a seven dollar charge for what?

A. Seven dollar charge from the original point of shipment, Island Park to Albany, including switching charges.

Q. What may that be?

A. Switching from one railroad over to another.

Q. You mean there were charges in reference to something that happened before he was shipped?

A. From Albany to Cynwyd.

Q. You mean the rates you have testified are from Albany to Cynwyd?

A. The rate of forty-nine cents a hundred for four thousand pounds.

Q. From Albany to Cynwyd?

A. Yes, sir.

Q. But that there had been some transportation of this horse from another place than Albany, called Island Park, and the charges from Island Park to the point of departure from Albany——

A. Was seven dollars.

Q. Was seven dollars?

A. Seven dollars.

By Mr. SELLERS:

Q. Seven dollars, and twenty-six dollars was paid you?

A. Twenty-six dollars and sixty cents.

106 Q. $26.60 was paid, and the charges were how much?

A. That included seven dollars.

Q. How much did you say?

A. Seven dollars.

Q. That left $19.60 as the freight charges?

By the COURT:

Q. That is forty-nine cents a hundred?

A. At forty-nine cents a hundred for four thousand pounds.

Q. That you said was first class charges?

A. That was the charge, reduced rate charge.

By Mr. SELLERS:

Q. What all was in this shipment, the horse and what else?

A. It included a horse, harness, trunks, and what are called the traps, stable utensils.

Q. How much space did they occupy?

The COURT: I suppose you need not doubt that it is agreed that four thousand pounds is a fair basis of value.

Q. Was that the fact?
A. That was the fact.

By the COURT:

Q. And four thousand pounds is the usual basis of valuation for the shipment of a horse and traps?
A. And traps.

By Mr. SELLERS:

Q. And upon that the freight charges, you say, were $19.60?
107 A. $19.60.
Q. In accordance with the terms of this?
A. In accordance with the terms of the release.
Q. What would it have been if they had not been shipped by this contract, but in the usual manner?
A. Twenty per cent. higher than first class rates.

(No cross-examination)

Testimony closed.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming, v. THE PENNSYLVANIA RAILROAD CO. | No. 39. C. P. No. 2, S., 1900.

PHILADELPHIA, *May 8th*, 1901.

Charge of SULZBERGER, *J.*

GENTLEMEN OF THE JURY: The plaintiffs, Hughes and Fleming, seek to recover from the Pennsylvania Railroad Company the sum of ten thousand dollars, being the value of a horse Montauk owned by them, which they shipped from Albany, New York, on August 10th, 1900, to be delivered at Cynwyd, Montgomery county,
108 Pennsylvania. The horse was shipped, went upon the cars at Weehawken, New Jersey, and thence on the road to its final destination, was halted in the Pennsylvania Company's yard at Fifty-second street where the accident happened. The primary questions involved are did the defendants carry the horse safely according to contract or were they guilty of negligence that produced the injury? You have heard the evidence upon that point, and from it you are to decide whether the company was guilty of negligence. Then the question of value arises. You have heard the evidence of value, and you have heard the comments upon the evidence of value by the counsel for the defendant. As a guide to you in the determination of the question I want to say that the remarks that have been made in this case upon the subject of its being a horse case, and that are frequently made in similar cases, are not to be taken by you as reflections upon the people who have testified, but as criticisms of the whole character of testimony that is based on opinion. A good deal of popular jesting is allowed in talking about

horse cases as a class, but in reality the true criticism is that wherever individual opinion rules there is a large field for capricious judgment. A valuable horse is something like a valuable picture or a valuable work of art. For the common mass of mankind a horse is worth one, two or three hundred dollars for the ordinary purposes of draft. A horse relieves man from the duty of pulling himself or his goods.

That kind of horse has what we call an easily ascertainable
109 market value. When you leave that class of goods that are needed for the actual necessities of all mankind you leave the safe rule of the value of the market. The market value is that value originally which is assigned to goods in the place where all men needing the goods congregate for the purpose of buying them. There is nothing more general than a market of the people, who are within its range, come there to buy, and in general the things sold there are things of ordinary and common use. By a sort of metaphore we apply "market value" to goods that do not ordinarily come into a literal market, namely, goods that are bought and sold by a relatively few among the mass of mankind. But you perceive at once that the certainty of opinion which is produced by multiplying transactions indefinitely, transactions in the same kind of goods at the same time and in the same place, that certainty which is produced by the standards thus established, is very much impaired when you are dealing with things that are so rare as to be in their nature individual, and moreover with things that are purchasable only by relativeiy very few people. Of course there is room for a wide difference of opinion there. You have heard the evidence of the plaintiffs' witnesses. Their estimates vary from ten thousand dollars to a sum considerably in excess of it. There are no witnesses for the defendant to qualify that judgment, but there is in you, with the cross-examination that has been furnished, the power to modify according to your judgments the
110 evidence of the witnesses by what has been said by themselves in the cross-examination. That is, it has been said by the plaintiffs themselves that within sixty days before this accident happened they paid about six thousand dollars for the horse, and spent some money on it. That is an item which you may well consider in determining its value, but if it is only an item it is not a controlling item. If their view be correct that afterwards they had such a test of the qualities of the horse which showed that the horse had qualities superior to those which had become apparent by the public record at Point Breeze, and that a disclosure of those qualities to the ordinary buyer would have satisfied him that the true value of the horse was in excess of that paid on the day the record was made at Point Breeze, that you are to take into consideration. I shall say no more to you on that point. Those two facts you are to ascertain.

I am asked by the defendant, however, to charge you, that even if you ascertain the injury to be due to the negligence of the defendant, and the value to be a considerable sum, yet nevertheless the plaintiff cannot here recover in a sum greater than one hundred dollars. That is a question of law upon which you are not en-

titled to have any other opinion that the one that I give you. The theory upon which the defendant asks the court to limit you to one hundred dollars is this: That upon the 10th of August, 1900, when the horse was shipped at Albany, a bill of lading was given to the shipper by the New York Central and
111 Hudson River Railroad Company, the lessee of the West Shore railroad which runs from Albany to Weehawken, and that at the same time when the bill of lading was given the shipper signed another paper, called "a live stock contract," which paper was executed only in single copy which was left with the railroad company. This live stock contract contains in it a printed clause which values horses and mules at a price not exceeding one hundred dollars each, and also says that beyond this valuation neither the said carrier, that is the New York Central & Hudson River Railroad Company, nor any connecting carrier, shall be liable in any event, whether the loss or damage occur through the negligence of the said carrier, or connecting carriers, or their employés, or otherwise. It appears that according to the law of New York such a contract may lawfully be made, and for the purposes of this case I charge you that according to the law of Pennsylvania such a contract could not be made by a Pennsylvania corporation in the State of Pennsylvania for carriage over a railroad of the State of Pennsylvania. The true question here is not whether citizens have a right to contract, because as a general rule the right of contract is sacred. There are, however, limitations upon the right of contract. There is a certain field of human activity over which the State assumes supreme control by virtue of its sovereignty, and when the State declares its policy, which we call public policy, upon those questions, then the right of private contract is utterly abol-
112 ished to that extent. According to the policy of the State of Pennsylvania no one who operates a railroad on its public roads can in any way, directly or indirectly, protect himself against his own negligence, and this upon the theory that the rights of the State of Pennsylvania over its own roads are absolutely sovereign. If the proposition be correct that the State of Pennsylvania by virtue of its sovereignty refuses to permit a carrier on its public roads to excuse himself, or limit himself, or protect himself against his own negligence by contracts made in the State of Pennsylvania, it is perfectly obvious that it will still less permit people outside of the State to make contracts by which the sovereignty of the State of Pennsylvania shall be interfered with. That which may not be done by the roads of the State of Pennsylvania cannot be done by any device. No man may go away from here and agree to violate the public policy of Pennsylvania, and no man who has never been here may outside of the State contract to violate the public policy of Pennsylvania within the State. Therefore so far as these papers constitute a contract by anybody at any time or any place made and entered into contemplating a violation of the public policy of Pennsylvania upon its own highways, such contract is absolutely null and void to that effect. I therefore charge you that there is no

limitation of one hundred dollars upon the amount that you shall ascertain as damages, and I decline to charge you as requested in the first and second points of the defendant.

Exception noted for defendant to the refusal to affirm the two points presented in behalf of the defendant, and to such part of the general charge as bears upon the subject matter treated in
113 those points.

Counsel for defendant, before the jury leave the box, requests the court to direct that the charge be reduced to writing and filed of record.

Defendant's Points.

I. That it was lawful in the State of New York for the carrier to limit its liability by a special contract for an injury resulting from its negligence; that said contract having been for a through consignment from Albany to Cynwyd, a place within this State, said contract must be considered in its entirety and is incapable of divisibility; that said contract having stipulated for an agreed valuation of the stock shipped, the parties must be governed by its terms throughout the entire route, as said contract must be interpreted and enforced here by the law of the place where it was made, and within which State it was partly performed; and that, consequently, the plaintiff is not entitled to recover in excess of the valuation agreed upon by the parties at the time of shipment.

II. That the plaintiff is not entitled to recover in execss of $100.

114 *Bill of Exceptions.*

And thereupon the counsel for the said defendant did then and there except as follows:—

I. To the refusal of the learned judge to affirm the two points presented in behalf of the defendant and to such part of the general charge as heard upon the subject matter treated in those points, and inasmuch as the subject matter of said exceptions does not appear upon the record, the said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and requested that the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge did put his seal to this bill of exceptions, pursuant to the aforesaid statute, this twenty-eighth day of May, 1901.

(Signed) MAYER SULZBERGER. [L. S.]

Endorsement: No. 39 September term, 1900. C. P. No. 2 William Hughes and Benjamin F. A. Fleming, trading as Hughes and Fleming *v.* Pennsylvania Railroad Company. Bill of exceptions Presented May 14, 1901. Filed May 29, 1901. P. H. White, pro. proth'y. This bill of exceptions may be marked presented and sealed by the learned trial judge. Shields for pl't'fs. David W. Sellers for def't. May 13, 1901.

115 EASTERN DISTRICT OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas No. 2 for the county of Philadelphia, Greeting:

We being willing for certain causes, to be certified of the matter of appeal of the Pennsylvania Railroad Company from the judgment in No. 39 September term 1900, wherein William Hughes and Benjamin F. A. Fleming, trading as Hughes and Fleming were plaintiffs and the said appellant was defendant, before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable J. Brewster McCollum, chief justice
116 of our said supreme court, at Philadelphia, the 24th day of June in the year of our Lord one thousand nine hundred and one.

CHAS. S. GREENE,
Prothonotary.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify, and send, as within we are commanded.

(Signed) MAYER SULZBERGER. [L. S.]

Endorsement: No. 39 Sept. term 1900. C. P. No. 2. No. 239 January term 1901. Supreme court. William Hughes *et al.*, trading etc., *v.* Pennsylvania Railroad Company, appellant. Certiorari to the court of common pleas No. 2 for the county of Philadelphia. Returnable the first Monday of January 1902. Rule on the appellee, to appear and plead on the return-day of the writ. Brought into office June 24, 1901 Jas. W. Fletcher, dep. proth'y Filed Nov. 22, 22, 1901 In supreme court. David W. Sellers.

117 *Assignments of Error.*

In the Supreme Court of Pennsylvania for the Eastern District, of January Term, 1901.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes and Fleming, Plaintiffs Below and Now Appellees,
v.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant Below and Now Appellant.
} No. 239.

Assignments of error.

1. The learned trial judge erred in declining to charge:

"That it was lawful in the State of New York for the carrier to limit its liability by a special contract for an injury resulting from its negligence; that said contract having been for a through consignment from Albany to Cynwyd, a place within this State, said contract must be considered in its entirety and is incapable of divisibility; that said contract having stipulated for an agreed valuation of the stock shipped, the parties must be governed by its terms throughout the entire route, as said contract must be interpreted and enforced here by the law of the place where it was made, and
118 within which State it was partly performed; and that, consequently, the plaintiff is not entitled to recover in excess of the valuation agreed upon by the parties at the time of shipment."

II. That the learned trial judge erred in declining to charge:

"That the plaintiff is not entitled to recover in excess of $100."

III. The learned court below erred in entering judgment in conflict with the act of Congress of Feb. 4, 1887, entitled "An act to regulate commerce." Section one of said act clearly provides that where the transportation is from one State to another, under a through bill of lading, that its provisions shall be carried out, unless it be in conflict with a statute of the State in which it may be performed or in conflict with the policy of the United States as laid down in the Federal courts, and that, as the contract was valid in the place where made, and as there is no statute in Pennsylvania prohibitory of an agreed valuation to establish a rate, and, as it is consistent with the policy of the United States as declared by the Federal courts, the judgment should have been for the valuation mentioned in the contract.

(Signed) DAVID W. SELLERS,
Attorney for Appellant.

Endorsement: 239. Jan. term, 1901. S. C. of Pa., E. Dist. Hughes & Fleming, appellees, *v.* P. R. R. Co., appellant. Assignments
119 of error. Filed Nov. 18, 1901 In supreme court. David W. Sellers, John G. Johnson, for appellant.

Opinion.

In the Supreme Court of Pennsylvania.

WILLIAM HUGHES and BENJAMIN F. A. Fleming, Trading as Hughes & Fleming, v. THE PENNSYLVANIA RAILROAD COMPANY, Appellant.	No. 239, January Term, 1901. Appeal from the Judgment of the Court of Common Pleas No. 2 of Philadelphia County.

POTTER, *J.*:

The plaintiffs in this case were the owners of a valuable horse which was shipped by their agent from Albany, New York, to Cynwyd, Pennsylvania.

The contract for transportation was made in Albany, with the New York Central railroad, acting for itself and connecting carriers. The bill of lading provided that "no carrier shall be liable for loss or damage not occurring on its own road, or its portion of the through route." The horse was carried safely by the initial carrier to the end of its line, and delivered to the defendant company, by whom it was brought to Philadelphia; at this point the horse was badly injured by the negligence of defendant's servants, and the injuries thus received are the foundation of this action.

The defendant admitted liability, but claimed that the plaintiff was not entitled to recover in excess of one hundred dollars. In support of this claim, it relied upon a printed form of a shipping contract, which was signed by plaintiff's agent at the time of shipment, and retained by the carrier. This contract contained a stipulation that the liability of the initial carrier and any connecting carrier should be limited in case of loss or damage to a horse or mule, whether through negligence or otherwise, to an amount not exceeding one hundred dollars each.

At the trial, the court below declined to charge the jury that such a limitation of the amount of the damages was lawful in this case. The jury under the evidence found a verdict for ninety-nine hundred ($9900) dollars, the full value of the horse.

The refusal of the court to charge that the contract of shipment, limiting the liability for negligence, was valid, and binding upon the plaintiff, is here assigned as error.

It is conceded that this contract is valid under the law of New York, and that if the horse had been injured while in course of transportation through the State, the plaintiffs would have been limited to the sum of one hundred dollars.

It is also conceded that such a contract, made in Pennsylvania, for transportation, between points within the State, would be void, as against the settled policy of this State. The question is not an open one with us. Nor does it matter whether the attempt be to

limit the liability as in Ruppel *v.* Railroad, 167 Pa. 166, or to claim exemption entirely from liability, as in Willock *v.* Railroad, 166 Pa. 184.

But because the contract was made in New York, to be performed partly in New York, and partly in Pennsylvania, it is contended that the law of New York should govern the case.

It may be noted here, that while the contract contains an acknowledgement that Grady had the option to ship the horse at a higher rate, with increased liability, yet as a matter of fact, no such offer was made. The evidence shows that the freight agent at Albany did not know the amount of the charges, and the blanks for the amounts were not filled in.

The case of Burnett *v.* Railroad, 176 Pa. 45, seems to be decisive of the question now before us. In that case the plaintiff was an employee of defendant at Trenton, N. J. He applied for and obtained free transportation from Trenton to Elmira, N. Y. He received two passes, one from Trenton to Philadelphia, which was not in evidence, and the other, an employé's trip pass, from Phila-
122 delphia to Elmira, by the terms of which he assumed all risks of accident. He was injured at Harrisburg, Pa. through the admitted negligence of defendant's employees. It was proved at the trial that under the laws of New Jersey the contract by which the plaintiff in consideration of free transportation, assumed the risk of accident, was valid and in that State he could not recover; and it was conceded by the defendant that in Pennsylvania the decisions are otherwise, and that such a contract will not relieve a common carrier from responsibility for negligence. There, as in this case, the contract was valid in the State where made. The transportation was safely performed into this State, and the injury occurred within this State through the negligence of the carrier. It was held that the responsibility of the defendant was to be determined by the law of the State were the contract was being performed, and where the negligence occurred; and recovery was allowed. In the present case, the facts are more strongly against the defendant, in that it is not the initial carrier under the contract, and the stipulation upon the part of each carrier was against liability for damages not occurring on its portion of the through route.

In Fairchild *v.* Pennsylvania R. R. Co., 148 Pa. 527, there was a contract for the transportation of a horse, from Washington, D. C., through Pennsylvania to Harkimus, New Jersey. It was injured by the negligence of the defendant, while in Baltimore, Maryland. The contract contained a stipulation limiting the value of
123 the horse to $100. Suit was brought to recover damages for the injury. The court below held the contract to be valid, and under instructions, a verdict was rendered for $105.50, and judgment entered thereon. This judgment was affirmed, this court saying, in a *per curiam*, "This written contract was made in the District of Columbia, and is to be interpreted by the *lex loci contractus*." Forepaugh *v.* R. R. Co., 128 Pa. 217.

If, however, in the performance of the contract, the horse had

been carried into Pennsylvania, and it had been injured in this State, the principle set forth in Burnett *v.* Railroad, *supra* would no doubt have been applied and the limitation of liability held void. In the Fairchild case, nothing is said about the law of Maryland where the injury occurred, though as a matter of fact the limitation of liability was valid in that State as appears in Brehme *v.* Express Co., 25 Md. 328. The Fairchild case when properly understood is authority only for the proposition, that a contract containing a limitation of liability, made to a State where it is valid, will be enforced in this State, when an injury occurs in the course of transportation through a State where such a contract is not contrary to public policy.

It is only an application of the doctrine of Forepaugh *v.* Railroad, 128 Pa. 217, to a slightly differing state of facts. The reference to Hart *v.* Railroad, 112 U. S. 331, could only have been to show the law of the District of Columbia. For in Grogan *v.* Express Co., 114 Pa. 523, this court expressly refused to follow the Hart case.

124 A distinction may well be made, between contracts of a general nature, and those of common carriers of goods through several States. Much stress is laid in the brief of appellants, upon the opinion of Justice Bradley in Morgan *v.* N. O. M. & T. R. Co., 2 Woods 244. The contract in that case was made in New York to be performed in an important part there; and in part by the building of a railroad in Louisiana; another important part was to be performed in Alabama, and perhaps other important parts in other States. The court held that, where a contract is to be performed in several jurisdictions, there could be no presumption that the parties had in view the laws of each of these jurisdictions, as the law that was to govern the contract, and therefore held that it was governed by the law of New York where it was made.

But it will be noticed that the case did not involve the law of common carriers, but only a contract relating to a matter about which the parties were free to contract, and against which there was no public policy of any State. The inquiry was therefore properly confined to ascertaining the intention of the parties to the agreement.

But a contract for the carriage of goods is not one as to which parties are entirely free to contract. Judge Sulzberger in his charge in this case, aptly said: "There are however limitations upon the right of contract. There is a certain field of human activity

125 over which the State assumes supreme control by virtue of its sovereignty, and when the State declares its policy, which we call public policy, upon these questions, then the right of private contract is utterly abolished to that extent."

It will not do therefore to apply to the contracts of common carriers, all the principles that may apply to other contracts. When courts declare a contract void as against public policy, they are not declaring the intention of the parties, as in the ordinary case, but are acting under the obligation of the higher law, which requires the enforcement of that which is for the public good.

Where a contract containing a stipulation limiting liability for negligence, is made in one State, but with a view to its performance, by transportation through or into one or more other States, we see no reason why it should not be construed in accordance with the law of the State, where its negligent breach causing injury, occurs. If such a contract comes under construction, in a State like Pennsylvania whose policy prohibits such exemption, and the injury has occurred in a State where the contract is valid, the stipulation will be enforced, as in Forepaugh *v.* R. R. Co., and in Fairchild *v.* R. R. Co. But if the injury has taken place within its limits, it will declare the contract null and void, as in Burnett *v.* R. R. Co. In the Fairchild case, as the injury occurred in Maryland, this court enforced the law of that State; if the injury to the horse had
126 been delayed until in the course of the journey, it had reached Pennsylvania, our own law of public policy would have controlled.

This principle is maintained in Barter *v.* Wheeler, 49 N. H. 9. In that case, the transportation was from Toledo, Ohio, to Concord, N. H. The goods were lost on their passage through New York, and the court said that if it is to "be executed partially in New York, we perceive no reason why in respect to that part, the law of that State should not govern, and such is the doctrine laid down in Story on Contracts, sec. 655."

To the same effect is Pittsburgh R. R. Co. *v.* Sheppard, 56 Ohio 69. This principle involves no greater difficulty as to proof, than the attempt to recover under a limitation of liability. In either case, negligence is a fact to be proven as to time and place, as any other fact.

Careful consideration of the contract and of the evidence shows that the contract in this case was not entire, either as to the obligation of the carrier to transport or of the shipper to pay the freight. The New York Central R. R. made no contract for itself beyond its own lines; it acted as agent only for the connecting carrier. It is the same as though each carrier had separately agreed to transport over its own lines. And the freight charges were shown to be made up of two distinct sums. One being the amount from Albany to Jersey City, and the other from Jersey City to Cynwyd. No case has come under notice, directly deciding that such a contract
127 is severable. But in Wells *v.* Thomas, 27 Mo. 17, the ruling is such as to indicate that in the opinion of the court, the bill of lading issued in that case covering lines of several carriers, was not an entire contract.

The third assignment of error suggests that the entry of judgment is in conflict with the interstate commerce act of Congress. This seems to be an afterthought, as there is no indication in the record that this question was raised or considered in the court below. It is not apparent how the act can have any application to this case. It contains nothing bearing upon the validity of a contract limiting the liability of a railroad for loss or injury caused by negligence. The object of the act seems to me to be to secure continuous carriage,

and uniform rates, and to compel the furnishing of equal facilities. We cannot see that the entry of judgment in this case interferes in any way with the legitimate exercise of interstate commerce:

Upon the case as a whole, there is nothing to show any bad faith upon the part of the shipper. He applied for the transportation of his horse upon a special car, and loaded him thereon, together with the traps and harness and a special attendant. There was no concealment, or any misrepresentation as to value. The shipper paid the carrier the amount asked of him. It does not appear that any bargain was made in advance, for a freight rate, nor was there any reason why the full rate, sufficient in the opinion of the car-
128 rier to cover the risk of transportation, should not have been charged and collected. The shipper should not be asked to pay for insurance against the negligence of the employee of the carrier. If protection of that nature was desired, the carrier was at liberty to procure it for itself, and at its own expense. It must be assumed also that both shipper and carrier knew the law of Pennsylvania, and had it in view when the contract was made. The facts were submitted to the jury in a charge which clearly and correctly stated the public policy of this State, with regard to the question under consideration.

The assignments of error are overruled, and the judgment is affirmed.

Mitchell and Brown, JJ., dissent.

Endorsement: No. 239 January term 1901. William Hughes and Benjamin F. A. Fleming, trading as Hughes and Fleming, *v.* The Pennsylvania Railroad Company, appellant. Filed Apr. 21, 1902. In supreme court. Appeal from the judgment of the court of common pleas No. 2 of Philadelphia county. Mitchell and Brown JJ. dissent. Judgment affirmed. Potter, J.

129 UNITED STATES OF AMERICA, } ss:
State of Pennsylvania, }

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 128 inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending wherein The Pennsylvania Railroad Company was appellant, and William Hughes and Benjamin F. A. Fleming, trading etc., were appellees.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 17th day of

May, 1902, and in the one hundred and twenty-sixth year of the Independence of the United States.

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

130 I, J. Brewster McCollum chief justice of the supreme court of Pennsylvania, do hereby certify, that Charles S. Greene was, at the time of signing the annexed attestation, and now is, prothonotary of the said supreme court of Pennsylvania, in and for the eastern district, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this seventeenth day of May one thousand nine hundred and two.

J. BREWSTER McCOLLUM.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, in and for the eastern district, do certify, that the honorable J. Brewster McCollum by whom the foregoing certificate was made and given, was, at the time of making and giving the same, and is now, chief justice of the supreme court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania, in and for the eastern district, at Philadelphia, this 17th day of May one thousand nine hundred and two.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE.

131 In the Supreme Court of the United States.

In the Supreme Court of Pennsylvania, Eastern District.

WILLIAM HUGHES and BENJAMIN F. A. FLEMING, Trading as Hughes & Fleming, Appellees,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Appellant.

Specifications of error by appellant to the judgment of the court in affirming judgment of court of common pleas No. 2 for the county of Philadelphia.

1. The learned supreme court erred in entering judgment of affirmance of the judgment entered in the court of common pleas No. 2 for the county of Philadelphia, because the entry of such judgment was in conflict with the act of Congress of 4th February, 1887, entitled "An act to regulate commerce," and the supplements thereto.

2. The learned supreme court erred in affirming the judgment of said court of common pleas by holding as invalid and illegal a contract for inter-state transportation made in the State of New York in the course of inter-state commerce.

3. The learned supreme court erred in affirming the judgment of the court of common pleas No. 2 of Philadelphia county, because by said affirmance of judgment a law of the State of Pennsylvania affecting inter-state commerce was enforced with such effect as to invalidate a contract for inter-state transportation valid under the act of Congress of February 4th, 1887 entitled "An act to regulate commerce," and the supplements thereto.

4. The learned supreme court erred in affirming the judgment of the court of common pleas No. 2 of Philadelphia county, by
132 which a contract for inter-state commerce transportation made in the State of New York, valid under the laws of the United States, by which the liability of the inter-state carrier was limited to the amount of value of the goods carried, declared in the bill of lading, was declared invalid.

5. The learned supreme court erred in affirming the judgment of the court of common pleas No. 2 of Philadelphia county by which judgment an inter-state commerce contract, made in the State of New York, was held invalid although said contract was made for the purpose of inter-state commerce transportation and was valid under the laws of the United States.

6. The learned supreme court erred in not holding that the law of Pennsylvania was in violation of the act of Congress of February 4th, 1887 entitled "An act to regulate commerce," and the supplements thereto, to such extent as said law prevented inter-state carriers from making contracts valid under the laws of the United States.

7. The learned supreme court erred in affirming the action of the court of common pleas No. 2, of Philadelphia county in declining to charge as follows:

"That it was lawful in the State of New York for the carrier to limit its liability by a special contract for an injury resulting from its negligence; that said contract having been for a through consignment from Albany to Cynwyd, a place within this State, said contract must be considered in its entirety and is incapable of divisability; that said contract having stipulated for an agreed valuation of the stock shipped, the parties must be governed by its terms throughout the entire route, as said contract must be interpreted and enforced here by the law of the place where it
133 was made, and within which State it was partly performed; and that, consequently, the plaintiff is not entitled to recover in excess of the valuation agreed upon by the parties at the time of shipment."

8. The learned supreme court erred in affirming the action of the court of common pleas No. 2 of Philadelphia county, which court had declined to charge as requested by appellant in these words:—

"That the plaintiff is not entitled to recover in excess of $100."

9. The learned supreme court erred in holding that it was not within the power of the appellant, an inter-state commerce carrier, under a through bill of lading for the transportation of a horse from a point in the State of New York to a point in the State of Pennsylvania, to carry under a liability limited to the valuation declared by the shipper where said carrier was willing to carry under an unlimited liability upon payment of a higher but reasonable rate of transfer.

SELLERS & RHOADS,
JOHN G. JOHNSON,
For Appellants.

134 [Endorsed:] 239. Jan. term, 1901. S. C. E. D. Appeal of the P. R. R. Co. from the judgment made in the case in which William Hughes and Benj. F. A. Fleming, trading as Hughes and Fleming, were plaintiffs and the above named appellant was defendant. Specifications of error. (In the Supreme Court of the United States.) Sellers & Rhoads, John G. Johnson, for appellant.

Endorsed on cover: File No. 18,542. Pennsylvania supreme court. Term No. 56. The Pennsylvania Railroad Company, plaintiff in error, *vs.* William Hughes & Benjamin F. A. Fleming, trading as Hughes & Fleming. Filed May 26th, 1902.